

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF MASSACHUSETTS

3
4 UNITED STATES OF AMERICA,

5 Plaintiff,

Criminal Action
No. 16-CR-10343-ADB

6 v.

January 29, 2019
Pages 1 to 259

7 MICHAEL J. GURRY, RICHARD M.
8 SIMON, SUNRISE LEE, JOSEPH A.
ROWAN, and JOHN KAPOOR,

9 Defendants.
10

11
12 TRANSCRIPT OF JURY TRIAL -- DAY 7
13 BEFORE THE HONORABLE ALLISON D. BURROUGHS
UNITED STATES DISTRICT COURT
14 JOHN J. MOAKLEY U.S. COURTHOUSE
ONE COURTHOUSE WAY
15 BOSTON, MA 02210

16
17
18
19
20
21 KELLY MORTELLITE, RMR, CRR
JOAN M. DALY, RMR, CRR
22 Official Court Reporter
John J. Moakley U.S. Courthouse
23 One Courthouse Way, Room 5507
Boston, MA 02210
24 joanmdaly62@gmail.com
25

1 APPEARANCES:

2 FOR THE GOVERNMENT:

3 FRED WYSHAK
4 K. NATHANIEL YEAGER
5 DAVID G. LAZARUS
6 Assistant U.S. Attorneys
7 United States Attorney's Office
8 John Joseph Moakley Federal Courthouse
9 1 Courthouse Way
10 Suite 9200
11 Boston, Massachusetts 02210
12 617.748.3100
13 fred.wyshak@usdoj.gov
14 nathaniel.yeager@usdoj.gov
15 david.lazarus2@usdoj.gov

16 FOR THE DEFENDANT MICHAEL J. GURRY:

17 TRACY A. MINER
18 MEGAN A. SIDDALL
19 Demeo LLP
20 200 State Street
21 Boston, Massachusetts 02109
22 617.263.2600
23 tminer@demeollp.com
24 msiddall@demeollp.com

25 FOR THE DEFENDANT RICHARD M. SIMON:

STEVEN A. TYRRELL
PATRICK J. O'TOOLE, JR.
Weil, Gotshal & Manges LLP
100 Federal Street
Boston, Massachusetts 02110
617.772.8365
steven.tyrrell@weil.com
patrick.otoole@weil.com

1 APPEARANCES (continued):

2 FOR THE DEFENDANT SUNRISE LEE:

3 PETER C. HORSTMANN
4 Law Offices of Peter Charles Horstmann
5 450 Lexington Street
6 Suite 101
7 Newton, Massachusetts 02466
8 617.723.1980
9 pete@horstmannlaw.com

10 FOR THE DEFENDANT JOSEPH A. ROWAN:

11 MICHAEL KENDALL
12 ALEXANDRA I. GLIGA
13 White & Case, LLP
14 75 State Street
15 Boston, Massachusetts 02109
16 617.939.9310
17 michael.kendall@whitecase.com
18 alexandra.gliga@whitecase.com

19 FOR THE DEFENDANT JOHN KAPOOR:

20 BETH WILKINSON
21 KOSTA S. STOJILKOVIC
22 Wilkinson Walsh Eskovitz
23 2001 M Street NW
24 Washington, D.C. 20036
25 202.847.4000
 bwilkinson@wilkinsonwalsh.com
 kstojilkovic@wilkinsonwalsh.com

 AARON M. KATZ
 BRIEN T. O'CONNOR
 Ropes & Gray
 Prudential Tower
 800 Boylston Street
 Boston, Massachusetts 02199
 617.951.7385
 aaron.katz@ropesgray.com
 boconnor@ropesgray.com

P R O C E E D I N G S.

(The following proceedings were held in open court before the Honorable Allison D. Burroughs, United States District Judge, United States District Court, District of Massachusetts, at the John J. Moakley United States Courthouse, One Courthouse Way, Boston, Massachusetts, on January 29, 2019.)

THE COURT: Just to recap, I have three motions pending, right? I have the motion to quash. I have what you are calling the motion in limine number 13, and then there's the one about the legal advice.

I managed to take home the motion on the motion to quash last night, but I forgot the memorandum in support, and you just filed yours last night, so I haven't had a chance to read that.

What about the other two? When do you need to be heard on that?

MR. LAZARUS: The motion to quash is not the government's motion.

THE COURT: No, I know. Not yours, the other side's.

MR. LAZARUS: With respect to that, actually, yesterday, or yesterday afternoon, Mr. Katz filed a response in opposition to that third party's motion about their subpoena issues, but in that, he moved for relief, he asked

1 for evidence to be suppressed if the Court rules against him.

2 So I would just ask, the government is not a party
3 to that motion. If there's going to be a motion requesting
4 our evidence be suppressed, I would ask it be put in an
5 actual motion and we get notice and an opportunity to deal
6 with it.

7 I read their response last night, just to see what
8 was going on in that aspect with the third party, and I
9 happened to see our potential trial evidence was the subject
10 of the motion as well, and that just seemed improper to me.

11 THE COURT: Okay. I haven't read -- I read the
12 motion but not the memorandum. And I saw that he -- I
13 printed yours out this morning, I saw that you filed a
14 declaration, but I haven't read any of it either.

15 MR. KATZ: Yes.

16 THE COURT: So let me take a look at it today,
17 hopefully during the break, and we can reassess where we are.

18 I'm actually -- in the middle of a trial, I'm not
19 going to make him, unless I need it, file a formal motion,
20 but I'll give you a chance to respond.

21 MR. LAZARUS: And I would at least just ask for
22 notice that we should read this third-party litigation, these
23 materials.

24 As you know, Your Honor, we're very busy. I
25 happened to read it last night thinking it had nothing to do

1 with us and I caught this at the end, this relief is directed
2 at us. So I'm not asking for formality. I'm just asking for
3 notice.

4 THE COURT: That's fine. That's perfectly
5 reasonable.

6 Let me see what it is. I don't want you to respond
7 to it unless there's a reason to respond it because I know
8 everybody is busy.

9 MR. LAZARUS: Thank you, Your Honor.

10 MR. KATZ: I don't have anything more.

11 THE COURT: Nice to see you standing, Mr. Katz.

12 MR. LAZARUS: With respect to the other two
13 motions, the motions are the, what you're calling motion in
14 limine 13, and then the one dealing with advice of counsel.

15 There's a little more time on that one, and we'd
16 like an opportunity to supplement a little bit of our
17 argument on it because yesterday, I think in Mr. Kapoor's
18 opening, the jury was told that the company received a
19 subpoena, that they retained outside counsel who said
20 everything is good, and then there was other argument to the
21 jury.

22 So the jury was left with the impression yesterday
23 that a subpoena was served on Insys' outside counsel saying
24 everything is fine, which is actually factually inaccurate
25 and is completely contrary to the position that the defense

1 has taken thus far, including in response to our motion in
2 limine for advance notice if they plan to assert an
3 advice-of-counsel defense.

4 So the posture of that motion changed yesterday, so
5 we just want to a chance to evaluate that. We think they've
6 opened a door now. We think we were already on solid ground,
7 but the way the jury was presented this issue yesterday makes
8 it more important that not only are we able to bring in these
9 compliance officers who were giving business advice but that
10 we now have to tell the jury that, in fact, the board, the
11 defendant and others, were not told everything is fine.

12 THE COURT: Okay. I'll hear you.

13 I did read your response to that last night. I
14 didn't dig into it in any big way. Same as you read the
15 third-party motion, I read this one just to see what was
16 going on, at least on the first round.

17 And I have to say a compliance officer giving
18 compliance advice seems very close to the line to me, and I'm
19 not discounting your proposal, which we sort of take it as it
20 comes during trial, but it seems very close to the line to
21 me. Like, it's hard to think how a lawyer acting in a
22 compliance capacity wasn't giving any legal advice.

23 MR. LAZARUS: I would encourage the Court to take
24 it as it comes because the testimony from Danielle Davis, for
25 example, is she happened to be a lawyer but she was acting in

1 a compliance role. And so any time somebody happens to have
2 a JD and they're hired in compliance, it's very different. I
3 mean, the Court knows that every compliance officer is not
4 acting as a lawyer. They don't necessarily have the same
5 skills that an outside counsel might have or other areas of
6 focus. Their focus is on this compliance aspect.

7 And so that was the case here, and so I was -- I
8 would just ask the Court to take it as it comes.

9 THE COURT: Well, I'm open to that. It seems to me
10 when you have a lawyer giving compliance advice, it's hard to
11 imagine that the law requires this never comes out of their
12 mouth, right?

13 MR. LAZARUS: Because that's their interpretation
14 as a compliance officer, giving business advice on the
15 compliance side of things.

16 THE COURT: But if you're a lawyer giving
17 compliance advice and they say, this is my compliance advice,
18 and it's informed by the fact that the law requires X, are
19 you going to take the position that's not legal advice?

20 MR. LAZARUS: That's compliance advice. If they
21 were not a lawyer and they were a compliance officer, they
22 would say the same thing. They would say, this is what the
23 law says, this is what we need to do. They would evaluate
24 whether speaker fees are reasonable. They would talk about
25 fair market value of contracts. They would do all of those

1 things without the legal degree.

2 So the law degree gives them no different basis to
3 be arguing that. It's part of who they are as an employee
4 giving the compliance advice, but they're not acting as a
5 lawyer. It is not -- it does not deserve the same type of
6 protection that the attorney-client privilege provides.

7 THE COURT: All right. So, I mean, as I say, I
8 haven't dug into it, but I'm willing to entertain the idea
9 and take it as it comes.

10 MS. WILKINSON: Your Honor, I want to talk about
11 the argument counsel just made about that we opened the door
12 yesterday.

13 I pulled the transcript. What I said was the board
14 said everything was okay. So on line 24 on page 109:

15 So if something happened in about December of 2013,
16 the government issued a subpoena to the company. The board
17 met. They hired lawyers, did all the things you're supposed
18 to do and said, we're in good shape, we'll cooperate and
19 we're going to go forward. I'm talking about what the board
20 said, not what the lawyers told them. So the board is
21 saying, we're in good shape. The board says, we're going to
22 cooperate and we're going forward. Mike Babich said the same
23 thing. In fact, he got on television. Then I showed the
24 CNBC.

25 So I was not saying what the lawyers said to them.

1 I was saying the board is looking at this. They know they
2 have their lawyers in place. They're going to cooperate and
3 go forward.

4 That's certainly not waiving privilege. We've been
5 very careful about that. We don't get to waive the privilege
6 anyway, as you know, but we are not saying that, you know,
7 Skadden Arps told the company, or our clients, that
8 everything they did was okay and we don't -- there's lots of
9 information in there that we're not privy to. So we don't
10 know exactly what he said. But I certainly wasn't suggesting
11 that, when you read the transcript carefully.

12 THE COURT: Well, I'm not ready to go forward on
13 that anyway. They want a chance to supplement it, so go
14 ahead and take that, Mr. Lazarus.

15 What's the schedule on the motion in limine 13? Do
16 we -- when does that need to be --

17 MR. LAZARUS: It's your motion.

18 MR. STOJILKOVIC: Your Honor, we did read their
19 response. I don't want to inundate the Court, but we do have
20 some disagreements with their response. If it would be
21 helpful, I can submit a reply brief. If it would be helpful
22 to hear from me orally, we can do that. I don't think that's
23 something we need for today.

24 THE COURT: Okay.

25 MR. LAZARUS: And I would ask, I think

1 Mr. Quinlivan is the one working on our response, Your Honor,
2 so I will work with counsel, but I want to make sure the
3 right people are in the room when we have those arguments.

4 THE COURT: That's fine. I don't want you to -- I
5 don't want to have a witness on the stand and someone tell me
6 this needs to be resolved at sidebar. I want to give us time
7 to be thoughtful about it.

8 MR. LAZARUS: It's a defense motion, but I don't
9 believe it's going to come up today.

10 MR. STOJILKOVIC: We don't either, Your Honor.

11 MR. LAZARUS: Things that will come up today have
12 to do with exhibits. So we agree with defense that we're
13 going to send the night before a list of the exhibits we
14 think we'll get to the next day with the full understanding
15 that we may update them, we may change it, but just as a
16 courtesy to try to speed up as much as we can.

17 So we did that last night, and they were nice
18 enough to send us objections this morning. We've reviewed
19 those. We've been back and forth a little bit, but we have a
20 few disagreements on a few items, so there's just a few areas
21 I just want to flag for the Court that I expect are going to
22 be coming up today.

23 First of all, it's my understanding that we have,
24 in theory, stipulations as to the authenticity of certain
25 categories of documents. Like, documents from Insys, we all

1 agree are authentic. Documents from E.J. Financial we all
2 agree are authentic. So that basic, bare bones, it is what
3 we say it is, we all agree on, is my understanding. Counsel
4 can correct me if I'm wrong.

5 Beyond that we have Insys documents that were
6 produced by the company that have been certified. So we have
7 certificates of authenticity, and we also have a table that
8 was certified by the same records custodian that says that
9 for all of these different Bates numbers, INS and a number
10 and INS-BOS and a number, these are business records. It
11 lays the 803-6 foundation and it satisfies 902.11. So those
12 are certified authentic business records.

13 So our position is that because they're certified
14 authentic business records, they can come into evidence once
15 we lay a foundation for them of what they are and they become
16 relevant. So we plan to show witnesses on the stand today
17 and other times certified business records, emails and
18 spreadsheets and PowerPoint presentations that that witness
19 may be party to or may not be, but either way, the witness
20 can look at the document and say, okay, this is an Insys
21 email. I recognize the names that are on here. The dates
22 are during the course of the conspiracy. And they can lay an
23 evidentiary and relevance foundation for the document, and
24 they're certified business records satisfying 902.11, 803.6.

25 So there's no requirement that a witness can only

1 testify about their own documents, but defense has taken that
2 position today, and so that's going to come up with a number
3 of documents that we're going to show witnesses.

4 And so to require us to bring in everybody who was
5 on a particular email or to bring them out of order just
6 flies in the face of the whole point of 902.11 and 803.6, and
7 we wanted to bring that to the Court's attention.

8 That's the first issue.

9 THE COURT: Hold on. So to the extent that -- I
10 mean, I will hear you on it.

11 It seems to me that to the extent that they're
12 saying this person worked at Insys, this is the date, this is
13 basic, that sort of information is fine. But are you
14 anticipating having a witness testify about the content of an
15 email that they're not a party to?

16 MR. LAZARUS: Absolutely, Your Honor. We -- so we
17 plan to ask the witness to look at a document, for example,
18 what is this? This looks like an Insys email. I see on here
19 the To and From are names I recognize as Insys employees
20 during this time period. We would plan to move it based on
21 the certifications that we've given counsel fully into
22 evidence, Your Honor, and then we would publish it and have
23 the witness talk about it to the extent that they're capable
24 of talking about it.

25 So that's going to depend on a question-by-question

1 basis like any other document, whether that witness -- that
2 witness is competent to move it into evidence between their
3 foundation and the certification. Whether they're then
4 competent to answer all our lines of questioning about it is
5 a totally separate issue.

6 And so there's also argument that defense has
7 raised about 803.5 and hearsay within hearsay. So to the
8 extent that these documents are chain emails, the chains
9 themselves will also satisfy hearsay exceptions, Your Honor.
10 And even if they don't -- and we believe that they will and
11 we'll show that on an exhibit-by-exhibit basis, Your Honor.
12 Even if they don't, the remedy there would be to redact the
13 part of the email chain that would not satisfy the hearsay
14 requirement, but the record itself is a business record.
15 They're largely to or from these defendants or other
16 co-conspirators or agents of these defendants. They satisfy
17 numerous exceptions to the hearsay rule under 801(d)(2), and
18 so there's no reason that these records can't come in.

19 And I was frankly shocked to see that they've taken
20 a position that a witness can only testify about an email
21 that they were on, even if they have knowledge about it.

22 MR. STOJILKOVIC: Your Honor, we do object, and I
23 just want to frame the discussion.

24 Counsel disclosed to us a number of emails or
25 number of documents on which today's witnesses were included.

1 They sent them, they received them, they're somehow in the --
2 communication. That's not what this goes to.

3 And counsel is right, we're not going to object on
4 authenticity grounds. We have a draft stipulation. We
5 haven't executed it, but I don't think either side is going
6 to contest the authenticity of the documents that Insys
7 produced.

8 But authenticity under 901, and even a
9 certification under 902 does not make every single email in
10 the possession of Insys admissible, admissible for the truth
11 under 803.

12 I point the Court, and I have -- I can pass this up
13 to you, United States v. Ferber from this district. It is
14 not the law that any document found in the files of a
15 business which pertained in any way to the functioning of
16 that business would be admitted willy-nilly as a business
17 record.

18 Also, cite to U.S. v. Cone, Fourth Circuit decision
19 from 2013. "While properly authenticated emails may be
20 admitted into evidence under the business records exception,
21 it would be insufficient to survive a hearsay challenge
22 simply to say that since the business keeps and receives
23 emails, then, ergo, all those emails are business records
24 falling within the ambit of Rule 803."

25 MR. LAZARUS: I agree with everything he just said.

1 THE COURT: Okay. I agree with everything, too. I
2 think the issue is, first of all, they don't all come in
3 because there's a need for relevance and he says he's going
4 to cover the relevance.

5 And then just because something is kept doesn't
6 make it a business record. It has to meet the other
7 requirements for business record.

8 So I think we can -- so far we're all in agreement.

9 MR. STOJILKOVIC: Okay. Then I think what's
10 missing here is that the certificate and the testimony of the
11 Insys custodian who turned over these records is simply that
12 these were records were, you know, in, you know, emails in
13 Insys' system or other records that were in Insys' files.

14 I don't think we have a witness today for these
15 documents that we're concerned about. Anyone can say, you
16 know, how this document was assembled. I don't think it's
17 appropriate to show emails to witnesses who are not anywhere
18 on the email chain.

19 I mean, and I want to make clear, this is not an
20 attempt to complicate things, but today's -- you know,
21 there's a lot of emails that the government wants to put in
22 between Mr. Burlakoff and other people who are not testifying
23 today. They'll have an opportunity to do that.

24 THE COURT: So let me stop you for a second.

25 I've been around this issue before and there are

1 many things that are business records, but a lot of times the
2 emails are not business records.

3 MR. LAZARUS: Your Honor --

4 THE COURT: How are we going to get there?

5 MR. LAZARUS: So these emails have been certified
6 as business records. They have the certifications. And the
7 person who's testifying second today, Maury Rice, was the
8 head of IT. He signed all but three of the Insys
9 certifications. The other three were signed by one guy who
10 was an IT person who swears that he also had authority to
11 certify those ranges of Bates numbers. They have all the
12 criteria for 803.6.

13 The burden is on the defense to show the records
14 are not reliable once that happens. They have no reason to
15 argue they're not reliable. The idea that the witness needs
16 to come in and say that they compiled or prepared a business
17 record is preposterous.

18 THE COURT: Well, I'm not saying that. I'm just
19 saying that -- I mean, for example, when you work for the
20 government, emails are business records. They're kept in the
21 normal course, right? There's many other companies where
22 they have some emails and they don't because they're not kept
23 in the ordinary course. They just have some and they don't
24 have some. So you need some foundation about the practices.

25 MR. LAZARUS: The certification that they have that

1 we've turned over with every production from Insys, Your
2 Honor, says -- it sets out, "I, Maury Rice, attest that I'm
3 employed by Insys Therapeutics, Inc.; that my official title
4 is executive director of technical operations; that I've been
5 appointed the keeper of records for Insys. Each of the
6 records included in the Bates number ranges listed below is
7 the original or a duplicate of the original records in the
8 custody of Insys Therapeutics."

9 Then it provides the information.

10 Then it goes on to say, "I further state that these
11 records were made at or near the time of occurrence by the
12 matters set forth by or from information transmitted by a
13 person with knowledge of those matters. These records were
14 kept in the course of regularly conducted business activity,
15 and it was the regular practice of this business to make such
16 records."

17 And then, "I certify that the foregoing is true and
18 accurate to the best of my knowledge and belief." Then it's
19 signed, dated and certified to meet the requirements of the
20 rule in lieu of testimony.

21 THE COURT: So is that person that's on that
22 certification going to testify?

23 MR. LAZARUS: He is second today, Your Honor, yes.

24 THE COURT: Yes. And he needs some of these emails
25 before he or she testifies.

1 MR. LAZARUS: With the first witness, yes, Your
2 Honor.

3 THE COURT: Because, I mean, it may be that on
4 cross-examination they can establish these are not kept in
5 the ordinary course.

6 MR. LAZARUS: That may very well be, Your Honor.
7 They have not raised that. I think that the argument against
8 the emails is perhaps that they're hearsay. And to the
9 extent that there's a hearsay argument, they come in because
10 they're going to be to or from the defendants, they're going
11 to be statements of co-conspirator, statements of agents and
12 so on.

13 THE COURT: So they are right about that. You have
14 to have an independent basis for each hearsay or --

15 MR. LAZARUS: That's correct. And I don't believe
16 they have a good faith basis to challenge the fact that these
17 are not business records. They had certifications, there was
18 grand jury testimony from Maury Rice attesting to the
19 certifications.

20 So the idea, now the argument is they're authentic
21 records but not kept in the ordinary course, I just don't
22 think that fits with any position that they've taken so far,
23 Your Honor.

24 THE COURT: Okay.

25 MR. KENDALL: Your Honor, a couple of things.

1 The second witness is an IT guy. Apparently the
2 government thinks he can rule on the admissibility of
3 business records because he filed a form affidavit that the
4 government gave him to submit. The issue that we're
5 concerned about is not authenticity. There's a lot of totem
6 pole hearsay in there.

7 So whether the person has knowledge as required
8 under 80 -- they took the book away from me -- but, you know,
9 the first prong of the business record rule, does the person
10 have knowledge. A lot of the stuff the person doesn't have
11 knowledge. It's embedded in some things they have knowledge,
12 some stuff they don't have knowledge. So it's got to be a
13 record-by-record analysis, which we'll do beforehand, and
14 we'll pick our shots, not to waste people's time.

15 The second thing, Your Honor, is I know, like, one
16 of the first ones coming up for Holly Brown, it's got -- I
17 would suggest not business record information but more
18 important, it's got information that never went to our
19 clients. It's something from Holly Brown to Mike Babich.
20 She says, Oh, this doctor looks like a pill mill. What is
21 the relevance of that? It didn't go to any of our clients.
22 It doesn't affect our state of mind in any which way.

23 If Mr. Babich wants to testify when he's hired for
24 the government that he thought he was selling to pill mills,
25 that's one thing, but it has nothing to do with --

1 THE COURT: That's a relevance objection.

2 MR. LAZARUS: And it actually gets forwarded to
3 Sunrise Lee, Your Honor, that same email. And there's other
4 bases for its admissibility, and we're happy to address it as
5 it comes in.

6 MR. KENDALL: The point being, the fact the
7 gentleman is going to say, yeah, these are emails from our
8 server, is not the issue. The issue is what you're going to
9 have to rule on. And we will pick our shots and only bring
10 the ones where we think it's necessary.

11 THE COURT: And I am happy to be able to say that
12 as a legal matter, I agree with everything all of you have
13 said, and I think we're going to have to take it document by
14 document.

15 MR. LAZARUS: Thank you, Your Honor. There are
16 other issues.

17 THE COURT: We can try to maybe do some of them
18 during the break, not have too many sidebars while they're
19 sitting here. Just a suggestion.

20 Go ahead, Mr. Lazarus.

21 MR. LAZARUS: Thank you, Your Honor.

22 So there's another objection that was raised that
23 is similar but has to do with Exhibit 253, which is a lengthy
24 email from Alec Burlakoff to Sales All, a number of other
25 people, to Rich Simon, Joe Rowan, Sunrise Lee and Mike Gurry,

1 Your Honor.

2 And so attached to that lengthy email about the
3 success of the company and various metrics is an article from
4 a publication that has to do with the company, and Mike
5 Babich is quoted in there. It was attached to the email that
6 we're introducing that went to all of these defendants. So
7 they're objecting to the inclusion of the attachment.

8 MS. WILKINSON: Not to all the defendants.

9 MR. LAZARUS: Sorry. Not to defendant Kapoor, Your
10 Honor, but as this is a joint trial, it went to all the other
11 defendants. So they're objecting just to the attachment.
12 And perhaps it will be helpful when it in comes up to deal
13 with it then. I just wanted to flag that for the Court as
14 well.

15 THE COURT: So is it suffice to give the jury an
16 instruction that the article doesn't come in for the truth of
17 the matter asserted but just comes in for the fact that they
18 received it? Does that solve the problem?

19 MR. LAZARUS: That's our position.

20 MR. STOJILKOVIC: Your Honor, our concern is, one,
21 I don't understand the relevance of, this is just an article
22 attached --

23 THE COURT: What's it about?

24 MR. STOJILKOVIC: It's about Mike Babich and the
25 job he's doing as CEO in pharmaceutical press coverage. And

1 it characterizes, you know, things that are going on.

2 I don't know why it's relevant to anyone's state of
3 mind. It also has embedded hearsay in it. Of course Mike
4 Babich is testifying at some point in this trial, so we'll
5 have the best witness to talk about what Mike Babich was
6 doing and not doing. And so I don't see the relevance,
7 except as offered for the truth. And there is the hearsay
8 problem.

9 THE COURT: Well, I will give an instruction that
10 the article doesn't come in for the truth, but you're going
11 to have to make the relevance showing.

12 MR. LAZARUS: That's fine, Your Honor, it's
13 referenced in the email.

14 I would also just note in their opening they played
15 a video of Mike Babich talking about things going on in the
16 company as if that somehow was relevant to the proceedings.
17 The article is similar to that. And so it's an inconsistent
18 statement in one position then the other position -- but I
19 would take the Court's offer to take it as it comes.

20 In addition to that, there's just a minor -- two
21 other minor matters. One, there is a composite exhibit that
22 at some point we'll seek to introduce entirely, which is
23 Exhibit 116, which is a packet of documents that were
24 prepared and given to the board of directors having to do
25 with bad conduct at this company. And in that packet, there

1 are text messages to or from Brett Szymanski who is expected
2 to testify third today.

3 So what we plan to do is to show the witness the
4 packet, Exhibit 116, and have him identify the text messages
5 that he's involved in within that packet, and move to
6 introduce those exhibits and publish those today that he's a
7 party to and not to publish the other ones, and to admit
8 those de bene subject to further connection and argument
9 later, pending the Court's ruling on some of the other
10 issues.

11 MS. WILKINSON: Your Honor, we strongly object to
12 that. We're supposed to call it Exhibit 116. It's marked
13 Confidential and Subject to Attorney-Client Work Product and
14 Attorney-Client Privileges. They're covered over with their
15 exhibit sticker Skadden Arps --

16 MR. LAZARUS: Accidentally, Your Honor.

17 MS. WILKINSON: -- Skadden Arps. They put it
18 together for the board in August 2014. If they want to
19 introduce text messages from Mr. Szymanski, just introduce
20 the text messages. Why do they need to put this in? It's
21 totally improper. They can get the text messages, they have
22 them, and put those in.

23 I mean, you haven't ruled on this issue. We
24 strongly objected to Skadden Arps' -- you know, part of their
25 advice to the board was putting these documents together and

1 providing them, selecting them for them and giving them
2 advice at a board meeting on August 7, 2014. That is at the
3 heart of the attorney-client privilege so --

4 MR. LAZARUS: This is --

5 THE COURT: Hold on.

6 MS. WILKINSON: To put that in front of the jury
7 would be improper.

8 MR. LAZARUS: Or not.

9 THE COURT: He's not going to show the whole packet
10 to the jury at this point. He's only interested in the text
11 messages.

12 Is there some way to show him the text messages in
13 a more isolated way?

14 MR. LAZARUS: Absolutely. We can pull them out.
15 That's fine, Your Honor. We'll do it as --

16 THE COURT: Call it 116A or something, and we'll
17 see if the rest of it comes in or doesn't.

18 MR. LAZARUS: We'll add it to the witness list and
19 designate however -- and we'll proceed that way. That's
20 fine.

21 MS. WILKINSON: Your Honor, why couldn't they
22 introduce -- since they have the text messages separately,
23 why even pull them out of here? They have copies of them
24 separately.

25 MR. LAZARUS: These are not duplicative exhibits.

1 MS. WILKINSON: You don't have copies of these text
2 messages for Mr. Szymanski that didn't come in this document.

3 MR. LAZARUS: I guess I'm confused why it matters.

4 THE COURT: I'm not sure what the difference is.

5 MS. WILKINSON: Because they're trying to get this
6 document in, Your Honor.

7 THE COURT: Maybe they will and maybe they won't,
8 but he's going to -- today, what's going to come in, is the
9 text messages. And you can number them 116A, but you're not
10 going to show to the jury that it is part of this larger
11 document --

12 MR. LAZARUS: Or even ask him where they come from.

13 THE COURT: He's just going to show the text
14 messages.

15 MR. LAZARUS: They're his text messages.

16 MS. WILKINSON: Of course they are. We're not
17 disputing they're his text messages.

18 THE COURT: So you're going to put them up in a way
19 that the jury sees the text messages but there's not --
20 they're not made to understand their part of the package --

21 MR. LAZARUS: Correct.

22 MS. WILKINSON: Your Honor, I have another request.

23 THE COURT: He had one more, too, right.

24 MR. HORSTMANN: I have one, too, Your Honor. It
25 concerns the first witness.

1 THE COURT: Do they all have to be done by 12:00?

2 MS. WILKINSON: Talk fast.

3 MR. LAZARUS: I already talk fast. The last item,
4 I'll be very brief.

5 With Maury Rice, he was the director of IT. He set
6 up all the infrastructure at Insys. He's going to testify
7 second. There's a sketch of the floor plan of the office
8 space, which is not controversial. We sent it over last
9 night. We had previously sent over handwritten notes of the
10 agent who did a walk-through in December of the space and
11 took photographs.

12 Counsel is unhappy that they got this formal floor
13 plan of Insys last night, and so I understand that they're
14 going to object on the basis of untimely disclosure. And I
15 would just ask the Court to allow us to show him the floor
16 plan of the office space at Insys' business's office. It's a
17 one-floor, not-complicated floor plan, Your Honor.

18 MR. STOJILKOVIC: Your Honor, we're not trying to
19 gum things up, but what we got last night was a about 20-page
20 memorandum that had been prepared on December 21 and
21 delivered to Mr. Lazarus on December 21, including the floor
22 plan and other materials. We also got about 130 photographs
23 that the government has had since that date. And, you
24 know --

25 MR. LAZARUS: That we're not introducing.

1 THE COURT: I'm going to let him show him the floor
2 plan.

3 MR. LAZARUS: They've had the rough notes since
4 December 14. This --

5 THE COURT: You're just putting in the floor plan,
6 right?

7 MR. LAZARUS: The floor plan and four photographs
8 of the building. They introduced plenty in their opening
9 yesterday at the outset --

10 MS. WILKINSON: You won, you won.

11 MR. LAZARUS: Thank you, Your Honor.

12 MS. WILKINSON: On these documents where, for
13 example, our client is not copied, which is almost all the
14 documents the government is going to show today, we would
15 like some process either for you to give a limiting
16 instruction or for the government not to keep referring to
17 the defendants received this.

18 Obviously, you told the jury over and over again
19 that each defendant deserves individual consideration, and,
20 of course, it's a very important point to us. These
21 documents are not relevant to Dr. Kapoor. There's no
22 evidence that he saw these documents, especially what they
23 call the pill mill email, which to us is very prejudicial and
24 should be excluded, you know, for our client. So I don't
25 know how you want to handle that. I don't want to have to

1 pop up all the time, if you could give some kind of limiting
2 instruction.

3 MR. WYSHAK: We object to any limiting instruction.
4 It's a conspiracy. These are co-conspirator statements. The
5 Bain case, which is 20 or 30 years old, once you jump on the
6 train, you're part of the conspiracy. You assume all the
7 baggage of the train. This knowledge is knowledge of the
8 co-conspirators, and the defense gets tagged with it. That's
9 just the way the law is. So a limiting instruction is
10 totally inappropriate for co-conspirator statements.

11 THE COURT: I think that's right. Although, when
12 we get to the final instructions, if you want something in
13 there about how to evaluate evidence, I'm happy to give it to
14 you then. Unless you can give me some case law or some
15 guidance on why that's appropriate at this stage, I'm not
16 going to give a limiting instruction.

17 MS. WILKINSON: We will, Your Honor, because this
18 happened in the Rifle case and there was a lot of -- because
19 there was -- there were gaps between the people, what they
20 were saying in the supposed conspiracy at the bottom of the
21 chain and the top, those documents were not always used
22 against the defendant, and there were limiting instructions.
23 And so we think we're entitled to the same thing.

24 There is not -- I understand what Mr. Wyshak is
25 saying generally about co-conspirator statements, but that

1 doesn't mean every single statement is attributable,
2 especially even under a 403 analysis when there's been no
3 evidence thus far introduced that he had any knowledge of
4 that statement.

5 THE COURT: There may be isolated instances where
6 that's true. Let's talk about them hopefully at a break and
7 we can also do it at sidebar.

8 MS. WILKINSON: Well, I just want to make that
9 objection on this pill mill exhibit. I don't know the
10 number. It's 2, Exhibit 2.

11 THE COURT: Who is that coming in through this
12 morning?

13 MR. WYSHAK: Holly Brown.

14 THE COURT: First witness?

15 MR. WYSHAK: Yes.

16 THE COURT: So let's take it as it comes.

17 Guys, I'd really like to get the jury out. Do we
18 have to do this before noon?

19 MR. KENDALL: It will take me one minute.

20 THE COURT: He has his two, though, so you have one
21 minute each.

22 MR. KENDALL: Procedurally, can we first object to
23 the first co-conspirator statement and then that will be an
24 ongoing objection. And then when we get to Petruzzielo, if
25 the government says it comes in for business records or

1 whatever, we can raise the 401 or 403 issues of relevance at
2 that time.

3 I think it's a pretty routine way to do it, Your
4 Honor. I just want to make sure we don't waive anything.

5 THE COURT: No, I understand.

6 MR. KENDALL: Otherwise, we've got to object every
7 time.

8 THE COURT: No. I'm happy to have a standing
9 objection on co-conspirator hearsay statements, but just make
10 sure that if you have some other objection to it, that's the
11 objection you're preserving.

12 MR. KENDALL: Right, Your Honor. But if you rule
13 it's not a co-conspirator statement, they're going to say
14 it's a business record anyway and we're going to come back
15 and say it needs a relevance analysis.

16 THE COURT: That's fine. But just, if there's
17 objections other than that --

18 MR. KENDALL: Yes, I understand we have to make
19 them.

20 THE COURT: Yes, because I don't want to be
21 ambushed later on by saying --

22 MR. LAZARUS: I just want to understand what the
23 "that" is. Is it just the hearsay co-conspirator
24 declaration, or is it also relevance?

25 THE COURT: Just the co-conspirator hearsay

1 declaration. That's what he asked for.

2 MR. KENDALL: Then if there's any relevance issue,
3 if we win on the co-conspirator issue, that they try to get
4 around it by saying it's a business record, even if it's not
5 a co-conspirator statement. It may be a business record but
6 it won't be relevant to our defendants.

7 THE COURT: Anything that I can do on the record
8 later on we can do on the record later on. But I don't want
9 to be -- I don't want to be ambushed by the fact that later
10 on we had this objection standing for everything.

11 Your objection will go to co-conspirator hearsay
12 statements, and then I will hear you on other objections that
13 become relevant once I've ruled on that.

14 MR. KENDALL: At the end of the case?

15 THE COURT: Yes.

16 MR. KENDALL: Fine, Your Honor.

17 MR. HORSTMANN: May we approach, Your Honor?

18 THE COURT: Yes.

19 MR. HORSTMANN: Your Honor --

20 **SIDEBAR:**

21 THE COURT: Guys, when you guys have this much
22 stuff you want to talk about, we have to start right at 9:30.
23 I don't want to do this.

24 MR. HORSTMANN: I was here at 8:00.

25 THE COURT: We all just sat here and then at 9:40 I

1 was like, well, can we talk about the motions. If you have
2 stuff to talk about, that's why I'm here. You can't let me
3 waste that ten minutes then have the jury come out ten
4 minutes late.

5 MR. HORSTMANN: With respect to the first witness,
6 Your Honor, Holly Brown, she clearly has a strong belief that
7 my client had a sexual relationship with Dr. Madison. It
8 leaks out regardless of what questions Mr. Wyshak is going to
9 ask.

10 So when I object, I just want the Court to
11 understand it, that her basis of knowledge isn't always what
12 she saw, what she heard, what she may have read. It's
13 sometimes what she heard from other people. It's sometimes
14 innuendo. She speaks in innuendos.

15 THE COURT: So who is doing the --

16 MR. WYSHAK: Me. I'm just going to ask what she
17 knows.

18 THE COURT: Just ask how she knows stuff. So if
19 she says they were having an affair, you have to follow up
20 and say, how do you know that.

21 MR. WYSHAK: I think she's going to say that they
22 had a relationship and -- but I don't know.

23 MR. KENDALL: Maybe he can lay the foundation
24 before the conclusion.

25 MR. WYSHAK: Yeah. I'm just going to ask her what

1 she observed about the relationship.

2 THE COURT: If she starts to veer away from that,
3 I'll try and bring her back.

4 MR. TYRRELL: Your Honor, I've sat very quietly,
5 haven't said a word, and I just have a question for the
6 government. I think my issue can wait until noon. The
7 composite org chart, you don't plan to put that in before
8 noon, do you?

9 MR. LAZARUS: My org chart, the one on opening?

10 MR. TYRRELL: Yeah.

11 MR. LAZARUS: I may show it to a witness, but I'm
12 not planning to introduce it.

13 MR. TYRRELL: I have an objection to that, Your
14 Honor. I think it was fine for him to use it during opening,
15 it's going to be part of his argument, but it's not a
16 business record. They created it. We have other org charts
17 that are business records that more accurately reflect the
18 lines of reporting. So I object to using it with the
19 witness. I have one that I can cue up for Your Honor that's
20 a more accurate depiction.

21 THE COURT: Do you want to use his until noon?

22 MR. LAZARUS: I'll do whatever the Court wants.

23 THE COURT: I would just like to get the jury out.

24 MR. TYRRELL: It's 5281. Yours is 1731, but the
25 more accurate --

1 MR. LAZARUS: But I also have other org charts.

2 THE COURT: Let's just deal with it at noon.

3 MR. TYRRELL: Which other ones do you have a --

4 MR. LAZARUS: I sent it to you last night, the 2012
5 org chart.

6 (End of sidebar.)

7 (Jury enters the courtroom.)

8 THE CLERK: Court is in session. Please be seated.

9 THE COURT: Good morning, everybody. We're going
10 to get right to it.

11 Government, call your first witness, please.

12 MR. WYSHAK: Yes, United States calls Holly Brown.

13 THE CLERK: You can step right up.

14 HOLLY BROWN, Sworn.

15 THE CLERK: Can you please state your name and
16 spell your last name for the record.

17 THE WITNESS: My name is Holly Brown, B-r-o-w-n.

18 DIRECT EXAMINATION BY MR. WYSHAK:

19 Q. Good morning, Ms. Brown. How old are you, ma'am?

20 A. 36.

21 Q. And what do you do for a living?

22 A. I work in pharmaceutical sales.

23 Q. Can you tell us a little bit about your educational
24 background?

25 A. Sure.

1 So I have a bachelor of science degree in
2 psychology from Iowa State, and then I have a doctorate of
3 chiropractic from Palmer College of Chiropractic.

4 **Q.** And when did you graduate from Palmer College?

5 **A.** 2011.

6 **Q.** Now, you told us that you work in pharma. Who do you
7 work for now?

8 **A.** I work for Kaleo Pharmaceuticals.

9 **Q.** And can you briefly tell us what you do for them?

10 **A.** I'm a sales rep in downtown Chicago, and I sell within
11 the allergy space for them, it's an epinephrine auto
12 injector, so similar to EpiPen.

13 **Q.** And how long have you been doing that?

14 **A.** With Kaleo, for about two and a half years now.

15 **Q.** Is that where you reside, in the Chicago area?

16 **A.** Yes.

17 **Q.** At some point did you work for a company called Insys?

18 **A.** Yes.

19 **Q.** And approximately when was that?

20 **A.** About February to March of 2012 until December of 2012.

21 **Q.** All right. Was that right after you graduated from
22 Palmer College?

23 **A.** Yes.

24 **Q.** Had you had prior experience in the pharma industry?

25 **A.** No. I pretty much went straight from grad school. This

1 was my first professional job out of school.

2 **Q.** And can you tell us how you went about becoming employed
3 by Insys?

4 **A.** I had, for certain reasons, been looking outside of the
5 chiropractic industry and was just applying for jobs in
6 medical sales. I came across Insys, interviewed for the
7 company and pretty soon got the job in Chicago as a sales rep
8 for Insys.

9 **Q.** And who did you interview with?

10 **A.** Mike Hemenway, who was my regional sales manager, and
11 Michael Babich.

12 **Q.** Okay. When you say he was your sales manager, what does
13 that mean?

14 **A.** So he oversaw the Midwest region. So there were reps
15 across the country, of course, and then he oversaw reps
16 within the Midwest. So there were about nine of us in and
17 around Illinois and in a few other different states as well.

18 **Q.** Okay. And did you interview with anybody else?

19 **A.** I don't think so, no.

20 **Q.** All right. Did you interview with Mike Babich?

21 **A.** Yes, Mike Babich was there at the initial interview that
22 I went to.

23 THE COURT: Mr. Wyshak, can I interrupt you for a
24 second. Can you do me a favor and pull that microphone
25 towards you.

1 MR. WYSHAK: Sorry, Your Honor.

2 THE COURT: Thanks.

3 Q. When you were hired, can you tell us what your salary
4 structure was?

5 A. So our base salary was 40,000 a year, and then it was
6 communicated to us that the expectation that our bonus
7 compensation would be about \$10,000 a quarter. So basically
8 doubling our base salary.

9 Q. When you say "bonus compensation," what does that mean?

10 A. So most sales representatives in pharmaceuticals are on
11 some sort of bonus system where their earnings are partially
12 dependent on your sales performance.

13 Q. Is that like a commission?

14 A. A commission, yes.

15 Q. Was there a particular rate for commissions?

16 A. Sorry, what?

17 Q. In other words, was there a particular percentage of
18 commissions?

19 A. Like I said, just the expectation was going to be about
20 \$10,000 a quarter. I don't remember exactly how they had
21 that broken down.

22 Q. All right. Now, when you first were employed by Insys,
23 what were you selling? What was your job?

24 A. I was selling Subsys, which is a sublingual fentanyl
25 spray.

1 **Q.** Anything else?

2 **A.** No, that's it.

3 **Q.** Was that the only product that Insys had on the market at
4 the time?

5 **A.** At the time, yeah.

6 **Q.** And when you were first hired, was the product actually
7 on the market?

8 **A.** So we were hired prelaunch and were trained to launch the
9 product and bring it to market.

10 **Q.** And so when you were initially hired, did you have any
11 training?

12 **A.** Yeah. So we started out with, I think it was about a
13 week of home training where they sent materials and packets
14 for us to read through with, you know, little quizzes and
15 tests to take afterwards. And then we were trained on-site
16 in Arizona at the home office for about a week.

17 **Q.** All right. So the home training, can you tell us what
18 those materials generally were about?

19 **A.** So it was just packets of information, company
20 information, processes, product information, background
21 information about pain and, you know, the disease that we
22 were selling into, and then a lot of product information as
23 well.

24 **Q.** And then you told us you went to Arizona?

25 **A.** Mm-hmm.

1 Q. And when was that?

2 A. It was either in March or April, I think.

3 Q. Had the product been launched by then?

4 A. No, it was still prelaunch.

5 Q. This was still prelaunch?

6 A. Mm-hmm.

7 Q. And what happened when you went for training in Arizona?

8 A. In Arizona, it was really a lot of solidifying our
9 messaging surrounding the product. You know, executives from
10 the company gave, you know, speeches and seminars, you know,
11 to get everybody pumped up for prelaunch. It was a lot of
12 practicing back and forth our messaging and how that was
13 going to sound in the field.

14 Q. All right. Did you receive any compliance training?

15 A. I don't remember anything major regarding compliance
16 training. I guess the thing that I would say about that is
17 that usually in on-site training, that's the largest part,
18 like, the whole thing is all about compliance and what you
19 can do and say in the field, and I don't remember there being
20 a lot of emphasis on that.

21 Q. I want to show you --

22 MR. WYSHAK: May I approach, Your Honor?

23 THE COURT: Yes.

24 MR. WYSHAK: It's been marked Exhibit 1.

25 Q. Can you just take a look at that and tell us if you

1 recognize that.

2 **A.** Yeah. So this is the Subsys device. It's just, it looks
3 like a little, you know, Binaca spray and is meant to spray
4 right under your tongue.

5 **Q.** That was what you were selling, basically?

6 **A.** Yeah.

7 MR. WYSHAK: If we could put up on the screen
8 what's been marked Government's Exhibit 481.

9 **Q.** Can you see that, Ms. Brown?

10 **A.** Yeah.

11 **Q.** Just for the -- sorry.

12 MR. WYSHAK: Just for the witness at this point,
13 Your Honor, and the parties.

14 **Q.** Do you recognize that?

15 **A.** Yeah, it's the package insert for the product.

16 **Q.** Okay. And what is a package insert?

17 **A.** A package insert is just drug information. So it's, you
18 know, dosing information, a little bit about
19 pharmacokinetics, contraindications, drug interactions,
20 adverse events, that kind of thing.

21 **Q.** Okay. And is this something that comes with the
22 prescription bottle which has been marked Government Exhibit
23 1?

24 **A.** Yeah, it would be included with each prescription.

25 **Q.** Are you familiar with the package insert?

1 **A.** Yes.

2 **Q.** Did you receive training on the package insert?

3 **A.** Yes.

4 **Q.** At the March training?

5 **A.** Yes.

6 MR. WYSHAK: I offer Exhibit 1 and Exhibit 2, Your
7 Honor.

8 MS. WILKINSON: No objection.

9 MR. TYRRELL: No objection, Your Honor.

10 THE COURT: They're admitted.

11 (Exhibit 1 admitted into evidence.)

12 (Exhibit 2 admitted into evidence.)

13 BY MR. WYSHAK:

14 **Q.** Okay. Now, I'd like to --

15 THE COURT: Hold on a second. No objection from
16 any of you?

17 MR. HORSTMANN: No objection, Your Honor.

18 MS. MINER: No objection.

19 THE COURT: Go ahead.

20 MR. WYSHAK: Can we keep that on the screen.

21 **Q.** So if you could, I'd just like to walk through this a
22 little bit.

23 MR. WYSHAK: If you could highlight the first --
24 well, so can the jury see it now, Your Honor? Has it been
25 published?

1 THE COURT: Sure.

2 MR. WYSHAK: Highlight the first side of that
3 screen to the extent you can. Can you blow it up? Okay.

4 Q. Can you see that --

5 A. Yeah.

6 Q. -- Ms. Brown?

7 A. Uh-huh.

8 Q. Okay. So what was Subsys?

9 A. Subsys was a fentanyl product. It was put into a device
10 for rapid absorption and therefore was a rapid-acting
11 fentanyl.

12 Q. Okay. And directing your attention to the top of the
13 page there, it says something "fentanyl sublingual spray."
14 Is that correct?

15 A. Yeah.

16 Q. What does that mean, sublingual?

17 A. It means the product is delivered under the tongue for
18 purposes of quicker absorption. The mucosa is very thin and
19 easily absorbs certain molecules. So the idea was that the
20 drug would be delivered very quickly to the bloodstream.

21 Q. Okay. And going down there's a sentence that says, "Due
22 to the risk of fatal respiratory depression, Subsys is
23 contraindicated in opioid non-tolerant patients and in
24 management of acute or postoperative pain, including
25 headaches and migraines."

1 So can you explain a little bit about what that
2 means.

3 **A.** Yeah. So it just means that the product, because of the
4 strength and onset of action being so quick, is
5 contraindicated for patients who do not have any tolerance to
6 an opiate. So it requires that a patient be probably on some
7 other type of opiate for a period of time before this and
8 then also be on an opiate during the duration of their
9 treatment with Subsys.

10 **Q.** Okay. And did you become familiar with what kind of
11 opiate medications were on the market at that time?

12 **A.** Yes.

13 **Q.** Can you name a few?

14 **A.** Competitors of this or just other opiates in general?

15 **Q.** In general.

16 **A.** So, you know, things that patients would have been on
17 prior to this would have been OxyContin, Norco, any different
18 thing like that, I guess.

19 **Q.** And if you scroll down a little bit to "Indications and
20 Usage," it says, "Subsys is an opioid agonist indicated for
21 the management of breakthrough pain in cancer patients 18
22 years of age and older who are already receiving and who are
23 tolerant to opioid therapy for their underlining persistent
24 cancer pain."

25 What does that mean, the indication? Were you

1 trained about that?

2 **A.** Yeah, so it's -- the indication states it's meant to be
3 for cancer patients who are in some type of pain and had been
4 on previous treatment for their pain.

5 **Q.** And did you receive any training about what you should
6 say to doctors regarding what this medicine is indicated for?

7 **A.** Initially the directive was to make sure that you mention
8 the actual indication at least once to the physician. It was
9 sort of implied to get through that kind of quickly. And
10 then once you had mentioned the full indication one time, we
11 were supposed to drop the word "cancer" and just talk about
12 breakthrough pain in general.

13 **Q.** And did you have an understanding of why you were trained
14 to drop the "cancer"?

15 **A.** I think it was because --

16 MS. MINER: Objection.

17 MR. HORSTMANN: Objection.

18 THE COURT: Basis?

19 MS. MINER: Her understanding, without foundation
20 that somebody told her.

21 THE COURT: Lay a foundation, please.

22 MR. WYSHAK: I think I did.

23 **Q.** You just testified that you had training regarding what
24 you were supposed to say to physicians regarding the
25 indication for this drug, correct?

1 **A.** Yes.

2 THE COURT: If you can flush out who the training
3 was from, please.

4 **Q.** All right. You told us you went to a training in
5 Arizona?

6 **A.** Yes.

7 **Q.** Was that, like, at a national sales meeting?

8 **A.** Yes.

9 **Q.** Can you tell us who the speakers were at the training?

10 **A.** There were a handful of people. I remember Mike Babich
11 speaking to the group in general, and then we would break
12 into, I guess you would call them break-out sessions where
13 our regional sales manager would kind of take over and give
14 directive and have us practice speaking things, like the
15 indication and how we were going to say this in an office.

16 **Q.** So that would have been something that Mike Hemenway had
17 told you?

18 **A.** Yes.

19 **Q.** So what did he tell you about dropping the "cancer"?

20 **A.** I think the idea was that physicians could use this
21 product off-label in any way that they wanted. And we would
22 be calling on oncology doctors, but even more than that we
23 would be calling on pain management physicians. So the pain
24 management physicians may or may not have been using this
25 drug for cancer patients.

1 MR. WYSHAK: Okay. And if we can move over to the
2 top of the next side of the product insert.

3 Q. Okay. So there's a list here of "Contraindications."
4 What does that mean?

5 A. Contraindications are reasons that a person should not be
6 put on a drug. So it could be that they're on another
7 product that would interact. It could be, in this case, that
8 they're not opiate-tolerant at this point. Could be age.
9 Could be any of those things.

10 Q. So it says "opioid non-tolerant patients." What does
11 that mean?

12 A. It means that patients that don't have a built-up
13 tolerance to opiates, meaning they had been on some sort of
14 opiate previously and probably, currently, were not
15 appropriate patients for Subsys.

16 Q. Okay. And it says "management of acute or postoperative
17 pain, including headache, migraine and dental pain."

18 A. Yes.

19 Q. You shouldn't use it if you have headaches or migraines?

20 A. Correct.

21 Q. Or "hypersensitivity to fentanyl"; is that correct?

22 A. Yes.

23 Q. And it says, "Warnings and Precautions," correct?

24 A. Yes.

25 Q. And can you read the first one there?

1 **A.** "Clinically significant respiratory and CNS depression
2 can occur. Monitor patients accordingly."

3 **Q.** What does that mean?

4 **A.** It means that if a patient is exposed to this product,
5 there is potential for an adverse reaction for any number of
6 reasons but that respiratory depression can occur.

7 **Q.** That means you stop breathing, right?

8 **A.** Yes.

9 **Q.** And the next one?

10 **A.** "Full and consumed Subsys units contain medicine that can
11 be fatal to a child. Ensure proper storage and disposal."

12 MR. WYSHAK: Okay. If we could just move back to
13 the first side and scroll down to -- right there. That line
14 that begins "Contains fentanyl," can you highlight that?

15 **Q.** It says, "Contains fentanyl, a Schedule II controlled
16 substance with abuse liability similar to other opioid
17 analgesics."

18 Do you know what that means, a Schedule II
19 controlled substance?

20 **A.** Yes. It's a product that has potential for abuse because
21 of different reasons, tolerance, feelings of euphoria or
22 whatever. It's a designation that the FDA puts on certain
23 drugs to make the rules around prescribing it a little more
24 stringent, a little more monitored.

25 MR. WYSHAK: If we could turn to the next -- it

1 would be page 3 of the package insert. Down to "Abuse
2 potential." Could you highlight that section, please.

3 **Q.** Can you read that for us, Ms. Brown?

4 **A.** "Subsys contains fentanyl, an opioid agonist and a
5 Schedule II controlled substance with an abuse liability
6 similar to other opioid analgesics. Subsys can be abused in
7 a manner similar to other opioid agonists, legal or illicit.
8 This should be considered when prescribing or dispensing
9 Subsys in situations where the physician or pharmacist is
10 concerned about an increased risk of misuse, abuse or
11 diversion."

12 **Q.** Next paragraph?

13 **A.** "Because of the risk for misuse, abuse, addiction and
14 overdose, Subsys is prescribed only through a restricted
15 program required by the Food and Drug Administration called
16 'Risk Evaluation and Mitigation Strategy' under the
17 Transmucosal Immediate Release Fentanyl REMS Access Program.
18 Outpatients, health care professionals who prescribe to
19 outpatients, pharmacies and distributors must enroll in the
20 program."

21 **Q.** Okay. And did you receive training about this TIRF REMS
22 program?

23 **A.** Yes.

24 **Q.** Can you briefly explain it to the jury?

25 **A.** Yeah. So it was something put in place by the FDA that

1 requires that both patients and prescribers and pharmacists,
2 like it said, are aware of the risks for abuse and side
3 effects with this particular drug. So all of these people
4 had to sign, basically, a form that said that they understood
5 what these risks were.

6 MR. WYSHAK: Could you go to the top of that page
7 where it says "Respiratory Depression."

8 **Q.** Could you read that for us?

9 **A.** "Fatal respiratory depression has occurred in patients
10 treated with Transmucosal Immediate Release Fentanyl products
11 such as Subsys, including following use in opioid
12 non-tolerant patients and improper dosing. The substitution
13 of Subsys for any other fentanyl product may result in fatal
14 overdose."

15 MR. WYSHAK: If we go to the next page, please.
16 Highlight that paragraph.

17 **Q.** Could you please read us that first paragraph?

18 **A.** "Individually titrate Subsys to a dose that provides
19 adequate analgesic and minimizes side effects. The initial
20 dose of Subsys to treat episodes of breakthrough cancer pain
21 is always 100 micrograms. When prescribing, do not switch
22 patients on a microgram-per-microgram basis from any other
23 oral transmucosal fentanyl product or Subsys, as Subsys is
24 not equivalent on a microgram-per-microgram basis with any
25 other fentanyl product."

1 **Q.** And did you have an understanding -- were you trained
2 about what that means, switching?

3 **A.** Yeah. It means that you can't -- for a patient that's on
4 a competitor product to Subsys, you can't just switch
5 somebody who is on 400 micrograms of something else to 400
6 micrograms of Subsys because the pharmacokinetic profile is
7 different per product.

8 **Q.** What does that mean?

9 **A.** It just means that the absorption is going to be
10 different. In the case of Subsys, the idea was that it was
11 absorbed more quickly through the transmucosal system than
12 through other ways which, you know, the mode of delivery
13 differed depending on different drugs in the class.

14 **Q.** And the fact that it's transmitted more quickly, does
15 that increase the risk of fatal overdose?

16 **A.** Yes.

17 MR. WYSHAK: If you go to page 8, 5.2. "Important
18 information prescribing."

19 Could you highlight that.

20 **Q.** Could you read that for us, Ms. Brown.

21 **A.** "Important information regarding prescribing and
22 dispensing Subsys is not bioequivalent with other fentanyl
23 products. Do not convert patients on a
24 microgram-per-microgram basis from other fentanyl products.
25 When dispensing, do not substitute a Subsys prescription for

1 any other fentanyl products. Substantial differences exist
2 in the pharmacokinetic profile of Subsys compared to other
3 fentanyl products that result in clinically important
4 differences in the rate and extent of absorption of fentanyl.
5 As a result of these differences, the substitution of the
6 same dose of Subsys for the same dose of any other fentanyl
7 product may result in a fatal overdose."

8 **Q.** And that's what you just told us, correct?

9 **A.** Yes.

10 MR. WYSHAK: If you could go to page 14, section
11 9.1. Right there.

12 **Q.** Could you read that for us?

13 **A.** "Fentanyl is a Schedule II controlled substance that can
14 produce drug dependence of the morphine type. Subsys may be
15 subject to misuse, abuse and addiction."

16 **Q.** Thank you. All right. Now, after this training in
17 Arizona, I assume you went back to Chicago?

18 **A.** Yes.

19 **Q.** And at some point did the product hit the market?

20 **A.** Yes.

21 **Q.** And how did you go about finding doctors to market this
22 product to?

23 **A.** Before launch we had been given an iPad that had
24 preloaded data into it specific to our territory. So we had
25 a list of physicians that we were supposed to call on, and

1 these physicians were ranked of importance through a decile
2 system that was based on their history of prescribing within
3 the opiate market, in particular, the fentanyl market.

4 **Q.** Okay. When you say they were ranked, who ranked the
5 physicians?

6 **A.** It was something that was done by corporate. I don't
7 know who exactly was responsible for that. But it was,
8 again, based on the amount of opiate product they were
9 prescribing historically.

10 **Q.** And what was the ranking system?

11 **A.** So it was a 1 through 10 system with 10 being doctors
12 basically of most importance who were writing the most
13 opiates, and particularly fentanyl drugs within the class,
14 and 1 being doctors of least importance who are writing the
15 fewest prescriptions.

16 **Q.** And did you receive any directions regarding which
17 doctors to target?

18 **A.** Yeah. We were targeting mostly the doctors who were of
19 high decile. So, you know, anything 5 and above really with
20 the highest attention on, you know, the higher decile
21 doctors.

22 **Q.** All right. Now, at this point in time, were there other
23 fentanyl drugs on the market that were competitors of Subsys?

24 **A.** Yeah, there were a handful. There were probably five or
25 six other immediate-relief fentanyl products that were direct

1 competitors.

2 **Q.** And do you remember the names of some of them?

3 **A.** There was Fentora, Actiq, Abstral, Lazanda. That might
4 be all that I remember.

5 **Q.** Okay. And can you tell us what your territory was?
6 Where were you marketing Subsys?

7 **A.** I was a Chicago north rep so I had most of downtown
8 Chicago and then called on doctors as far north as Warsaw,
9 Wisconsin.

10 **Q.** And the doctors who were on your target list, basically,
11 what was their practice?

12 **A.** It was mostly pain management physicians who had been
13 writing these types of products in any amount of quantity.
14 We had oncologists on our target list, but generally they
15 were lower decile and not of as much importance as the pain
16 management physicians.

17 **Q.** Okay. And can you tell us a little bit about actually
18 what you would do, what was your day like, how did you try to
19 sell Subsys?

20 **A.** So we spent most of our time visiting these physicians'
21 offices. We would ask for time with the physician to speak
22 and teach them about the product. This typically occurred
23 over a lunch.

24 So offices would allow drug reps to schedule
25 lunches and set aside time for the doctor to come in and hear

1 your product presentation.

2 **Q.** Okay. And can you tell us what the reception was by the
3 community of doctors that you were trying to market Subsys
4 to?

5 **A.** In my territory anyway, the reception -- I was met with a
6 lot of hesitancy. You know, there are already a number of
7 these types of drugs on the market. I think opiate-
8 prescribing had been looked at a little bit more stringently
9 in recent years so doctors were just kind of concerned. I
10 mean, it was the type of product that they didn't usually
11 have -- I don't want to say a lot of use for, but they
12 typically didn't have too many patients that they thought
13 were appropriate for this type of product.

14 So, you know, I think most of them agreed that it
15 was a good product in terms of delivery and the time of
16 onset. But like I said, most of them were just hesitant and
17 didn't have a whole lot of patients that they thought they
18 would use this for.

19 **Q.** Do you know what the word or the term "prior
20 authorization" means?

21 **A.** Yes.

22 **Q.** And what does that mean?

23 **A.** A prior authorization is something that insurance
24 companies will put in place when somebody has submitted a
25 claim for a drug and they initially deny it because it's not

1 on formulary or they don't want to cover it for whatever
2 reason. They require prior authorization to cover,
3 basically, which means they send paperwork back to the
4 physician asking for justification for why the patient needs
5 this particular product as opposed to something that might be
6 on their formulary or deemed as cheaper or whatever.

7 So the process is the physician fills out this
8 paperwork, gives their justification, sends it to the
9 insurance company, and then the insurer will make a second
10 decision as to whether or not they're going to cover the
11 product.

12 **Q.** And was Subsys generally subject to a requirement of a
13 prior authorization?

14 **A.** Usually, yeah.

15 **Q.** Did that impact your ability to market Subsys?

16 **A.** Yeah, it made it tough, for sure, and it was something
17 that was a little bit unexpected going into it for most of
18 us, not having a lot of experience in the pharmaceutical
19 industry. As doctors began to try Subsys, they were usually
20 met with these prior authorizations that we sort of didn't
21 have an understanding of how to deal with.

22 **Q.** And how did doctors react when they were required to
23 obtain prior authorizations?

24 **A.** Not happily. It's something that most physicians loath,
25 whether it's Subsys or any other product. Prior

1 authorizations are a pain for most of them to fill out.

2 **Q.** And in terms of dealing with these marketing issues, did
3 you have meetings with Mike Hemenway, or how did you go about
4 discussing strategy?

5 **A.** We had weekly conference calls with Mike Hemenway, my
6 boss at the time. And, you know, as these prior
7 authorizations became more and more of an issue, this became
8 more and more the topic of discussion for these conference
9 calls, strategizing how to encourage doctors to complete
10 them, and, you know, ideas for getting them done, basically.

11 **Q.** All right. Now, I want to bring you to a national sales
12 meeting in September of 2012. But prior to that meeting, can
13 you describe how successful you were in selling Subsys?

14 **A.** I had some initial success getting physicians to try the
15 product, but as I mentioned, most of them had, you know, told
16 me that they didn't have a ton of patients appropriate for
17 this.

18 So, you know, physicians tried it. They were met
19 with issues with the prior auth. They didn't have a ton of
20 patients anyway. So my volume did not maintain, and by
21 September I was struggling.

22 **Q.** Now, in September of 2012, did you attend a national
23 sales meeting?

24 **A.** Yes.

25 **Q.** And where was that?

1 **A.** That was in Arizona.

2 **Q.** Were there any significant changes regarding the sales
3 structure at Insys that occurred in combination with that
4 national sales meeting?

5 **A.** Yeah. So at some time prior to this meeting, the VP of
6 sales had departed from the company. I'm not exactly sure
7 why or why that happened, but there was no VP of sales. And
8 then at the time of the sales meeting right before it
9 happened, my manager, Mike Hemenway, was let go from the
10 company.

11 **Q.** Okay.

12 **A.** As well as some other managers that I didn't interact
13 with, I think.

14 **Q.** Okay. And who replaced the VP of sales?

15 **A.** Alec Burlakoff.

16 **Q.** And who replaced Mike Hemenway?

17 **A.** Sunrise Lee was my new manager.

18 **Q.** Had you ever met Ms. Lee before?

19 **A.** No.

20 **Q.** So how did it come about that you were introduced to her?

21 **A.** So they flew us in for the sales meeting the night before
22 the meeting was supposed to happen, and I met her the next
23 morning, actually, on the elevator on the way to breakfast.
24 So just before the meeting started.

25 **Q.** Okay. I don't know if you can see her in the courtroom.

1 **A.** She's just there.

2 MR. WYSHAK: Indicating the defendant, Your Honor.

3 THE WITNESS: What's that?

4 MR. WYSHAK: Let the record indicate the witness
5 has identified Ms. Lee.

6 THE COURT: Yes, the record will reflect that.

7 BY MR. WYSHAK:

8 **Q.** So you met her at this national sales meeting?

9 **A.** Yes.

10 **Q.** All right. Now, can you tell us how things changed? I
11 mean -- well, did things change as a result of Mr. Burlakoff
12 and Ms. Lee assuming these new positions?

13 MR. HORSTMANN: Objection, Your Honor. Unwind the
14 question a little bit --

15 MR. WYSHAK: I can unwind it.

16 THE COURT: Yes, thank you.

17 **Q.** Can you tell us what, if anything, Mr. Burlakoff
18 communicated to the salespeople about his strategy at this
19 meeting?

20 **A.** Yeah. So I think at this time a lot of the sales force,
21 including myself, were pretty beaten down. The pressure to
22 sell in volume was really high, and I think there was only a
23 small handful of reps across the country that were meeting
24 those expectations. So, you know, the pressure was on to,
25 obviously, increase sales of Subsys.

1 When Alec Burlakoff came on board, it was kind of
2 a, okay, we're going to toss the old rule book out the window
3 and start with a new plan of attack. So that included
4 conversations surrounding speaker programs, it included
5 conversations about finding, he would call it your whale
6 doctor, your one prescriber that was really going to carry
7 most of your business for you.

8 And he insisted that each territory had a whale
9 prescriber, and it was just about finding who that person was
10 and finding somebody who, number one, had the volume and who,
11 number two, would be willing to work with me as the rep and
12 Insys as the company.

13 **Q.** So can you describe that a little more? I mean, what
14 is -- a whale is a doctor?

15 **A.** Yeah. You know, I mean, the descriptions were never
16 super clear. So it was kind of a lot of expecting us to read
17 between the lines. But I think what he meant, again, was a
18 physician who was writing a lot in the opiate market and that
19 also might be open to working very closely with a
20 pharmaceutical company mainly through the execution of
21 speaker programs.

22 **Q.** Okay. Now, when you went back to Chicago, you started
23 working with Ms. Lee?

24 **A.** Yes.

25 **Q.** Can you describe the difference between her management

1 style and Mike Hemenway's management style?

2 **A.** Well, Mike Hemenway was a very typical, from what I know
3 now, sales manager in pharmaceuticals. He had a background
4 in it. You know, he was responsible and organized about
5 keeping us organized and on task and strategizing and things
6 like that. Obviously knew the industry very well.

7 Sunrise, on the other hand, didn't seem to have any
8 sort of background either in health care or in
9 pharmaceuticals. Nobody really knew exactly what her
10 background was. And she just didn't have, you know, the
11 organizational or education, it seemed, to manage a sales
12 team within pharma.

13 **Q.** Did you ever ask her what she had done prior to becoming
14 a regional sales manager for Insys?

15 **A.** Yeah. The question came up, you know, in casual
16 conversation. And it was never quite clear.

17 So at first, I was under the impression --

18 MR. HORSTMANN: Objection.

19 BY MR. WYSHAK:

20 **Q.** Well, tell us, to the extent you can, what she said to
21 you about that.

22 **A.** At first she said that she had been involved in either --
23 she was a massage therapist or owned a massage therapy
24 company. And then at some point she said that she had had a
25 degree in biochemistry.

1 **Q.** All right. So let's talk a little bit about speaker
2 programs. Can you describe to the jury what the concept --
3 maybe that's a bad question.

4 What did you understand a speaker program to be?

5 **A.** Well, at this point in my career I had never done one.
6 But basically I understood it to be an event where a
7 physician would make a presentation about the product to a
8 group of other physicians or people that were supportive to
9 him. So, you know, staff or whatever. And then that person
10 would get paid an honoraria to do that, but the discussion
11 obviously needed to be to prescribers about the product.

12 **Q.** So it was about educating other people who were going to
13 be prescribing this product?

14 **A.** Yes.

15 **Q.** And so how would you go about doing that? What would you
16 do to get somebody to speak and put together a program?

17 **A.** Well, with Insys, the idea was that it was somewhat up to
18 the rep to find a physician that was, number one, using
19 Subsys, and then, number two, interested enough in it and the
20 company to agree to do a speaker program, somebody who was
21 interested in doing it.

22 I ended up, in my territory, getting someone sort
23 of appointed as a speaker that was used. But basically that
24 person has to go through training, you know. They do an
25 online training for it, and they're supposed to be confined

1 to a set -- like a slide deck that is provided by the
2 company.

3 **Q.** Okay. And do you remember who that person was initially?

4 **A.** So in the early, early days, it was Dr. Pantel Fischer,
5 and she did maybe one program within a doctor's office at a
6 launch, and then later my main speaker became Dr. Paul
7 Madison.

8 **Q.** Okay. So let's talk a little bit about Dr. Madison. Was
9 he one of the doctors on that initial target list of high
10 decile doctors?

11 **A.** Yeah, he was one of my higher decile doctors for sure and
12 probably wrote more opiates than I would venture to say
13 almost any other physician in my target list.

14 **Q.** Okay. And did you begin -- had you approached him prior
15 to the national sales meeting in September of 2012?

16 **A.** Yeah. So from the time we launched the product until the
17 national sales meeting, I had been calling on him fairly
18 regularly. I became a little bit uncomfortable at some point
19 into this just because of the type of doctor and location and
20 all of that that he was at, but he never -- I don't think he
21 ever prescribed one Subsys prescription before any of this.
22 I had been relatively unsuccessful with him. He kind of gave
23 me the brush-off and just didn't have much time of day for
24 me.

25 **Q.** All right. So where was he located?

1 **A.** He had two offices. One was in Melrose Park at the time
2 and the other one was in Michigan City, Indiana.

3 **Q.** All right. And which office did you visit, both offices?

4 **A.** Eventually I went to the one in Indiana, but at first I
5 was just going to the Melrose Park office.

6 **Q.** And can you describe what kind of operation he was
7 running at that location?

8 **A.** Yeah. It was markedly different than pretty much all of
9 the physicians that I called on. It was in this little kind
10 of dingy strip mall in a not-so-nice area of town. The first
11 time I went in there I walk in and there's a guy sitting
12 behind the desk counting this big wad of cash out of a safe.
13 The patients that hung around the office were people that
14 looked like they probably had some kind of problem. Like I
15 said, just very different from other offices that I called
16 on, really disorganized. Dr. Madison may or may not have
17 shown up on time or at all. It was just kind of a
18 free-for-all.

19 **Q.** Were you uncomfortable?

20 **A.** Yes.

21 **Q.** And why was that?

22 **A.** It just didn't seem like a good place to be. I had
23 actually been warned about this office by Mike Hemenway
24 previously. It's sort of notorious in the area. I had done
25 a Google search beforehand as well, and you can find all

1 kinds of unsavory information about Dr. Madison and the
2 physician who was -- had taken the practice over for who had
3 previously lost his license.

4 **Q.** And who was that of?

5 MR. HORSTMANN: Objection, Your Honor.

6 MR. KENDALL: Objection, Your Honor.

7 THE COURT: Basis?

8 MR. KENDALL: Relevance.

9 THE COURT: See if you can lay a foundation for
10 that, please.

11 BY MR. WYSHAK:

12 **Q.** So this other physician, had you visited his office?

13 **A.** So he worked still, even though he had lost his license,
14 out of the Melrose Park office. It had been his previously,
15 and he still stayed at that office kind of managing things
16 behind the scene and had Dr. Madison take over prescribing
17 basically where he had left off.

18 **Q.** What was his name?

19 **A.** Dr. Joe Giacchino.

20 **Q.** You said he lost his license?

21 MR. KENDALL: Objection, Your Honor. Don't know
22 that she's been part of that process --

23 THE COURT: Basis for her knowledge of whether or
24 not he lost his license, please.

25 **Q.** How do you know?

1 **A.** So there's public reports --

2 MR. KENDALL: Objection, Your Honor. What she
3 reads in the newspaper --

4 THE COURT: If you want to --

5 MR. KENDALL: Just objection, Your Honor.

6 THE COURT: Overruled. But let her finish the
7 answer, please.

8 **A.** You can get online and find articles that detail his
9 lawsuit and the case that he had, I think, sexually assaulted
10 or abused a patient in exchange for opiate prescriptions and
11 had a long history --

12 MR. HORSTMANN: Objection.

13 MS. MINER: Objection, Your Honor.

14 MR. KENDALL: Objection.

15 THE COURT: So just for the jurors, what she's
16 reading in a newspaper article she doesn't know if it's true
17 or not. She's just reading it in a newspaper. So it doesn't
18 come in for the truth of the matter asserted, but it comes in
19 for her understanding of it. Okay.

20 BY MR. WYSHAK:

21 **Q.** You went to Dr. Madison's office. During the period you
22 were at Insys, how many times did you go there?

23 **A.** I mean, it was supposed to be a weekly event that we
24 would see our top decile doctors.

25 It went that way in the very beginning, and then

1 after I continued to get the brush-off and felt uncomfortable
2 there, I would go in much less frequently. So maybe once a
3 month. Once every two weeks if I felt like I really had to.

4 **Q.** Did you meet this doctor at that time?

5 **A.** Yes.

6 **Q.** Did you have conversations with him?

7 **A.** Yeah. So in the beginning I did several lunch meetings
8 with him, and, again, was never really able to capture his
9 attention.

10 MR. HORSTMANN: Can we know who "him" is, Your
11 Honor?

12 THE COURT: Can you clarify which of the two
13 doctors you're talking about.

14 **Q.** Dr. Giacchino, had you met him?

15 **A.** I had met him but --

16 MR. HORSTMANN: Objection, Your Honor.

17 THE COURT: Excuse me?

18 MR. HORSTMANN: Objection.

19 THE COURT: Basis?

20 MR. HORSTMANN: Relevance.

21 MS. WILKINSON: Right. Relevance.

22 THE COURT: Overruled.

23 **A.** Yes, I had met him not for the purpose of going into call
24 on Dr. Giacchino but for the purpose of going to call on Dr.
25 Madison. But Dr. Giacchino was often there in the Melrose

1 Park office at the desk doing something.

2 **Q.** All right. Now, you told us that you had been
3 unsuccessful with Dr. Madison; is that right?

4 **A.** Yes.

5 MR. WYSHAK: Can we put Exhibit 2 on the screen
6 just for the witness. Can you go to the caption. The
7 header.

8 **Q.** So this is a -- what is this?

9 **A.** This is an email that I had sent. So I think at this
10 point, Mike Babich had stepped in and had sort of overtaken
11 the role of VP of sales from what I remember, and this was an
12 email -- we were required at one point to basically give
13 justification to why some of our top doctors were not
14 prescribing, and I think this was something that was
15 requested to --

16 **Q.** All right. Basically an email from you to Mike Babich?

17 **A.** Yes.

18 MR. WYSHAK: Can we scroll down to the bottom, last
19 page. Stop. Okay, right there and go to the header.

20 **Q.** Do you see the header there?

21 **A.** Yes.

22 **Q.** There's an email from Mike Babich to you; is that
23 correct?

24 **A.** Yes.

25 **Q.** Dated?

1 **A.** August 1, 2012.

2 **Q.** So this will be an email before Alec Burlakoff took over,
3 or Sunrise Lee took over, correct?

4 **A.** Yes.

5 MR. WYSHAK: I offer it, Your Honor.

6 MR. HORSTMANN: Objection.

7 MS. WILKINSON: Objection.

8 THE COURT: Basis?

9 MS. WILKINSON: Relevance.

10 MR. KENDALL: Relevance and hearsay, Your Honor.

11 MS. WILKINSON: And 403, Your Honor.

12 THE COURT: All right.

13 MR. KENDALL: Can we go to sidebar?

14 THE COURT: If you want to have a sidebar, you can.

15 I'm going to overrule the relevance objection. I'm going
16 to -- I'll see you at sidebar.

17 **SIDEBAR:**

18 MR. WYSHAK: If we start -- why don't we start at
19 the beginning. So Mike Babich sends her, in August, an email
20 basically instructing her to basically give him a breakdown
21 on these doctors who are listed here.

22 THE COURT: Okay.

23 MR. WYSHAK: There's about ten of them, I think,
24 maybe a little more. What she's doing with those doctors.

25 So he's instructing her, basically, to report about

1 her efforts in trying to sell Subsys to those doctors who are
2 on her target list. So she does that.

3 She responds to him with the report, and
4 particularly regarding Dr. Madison, she reports upon her
5 success with him, which is negative, and reports to him that
6 he's running a pill mill.

7 And I think that, Your Honor, number one, you know,
8 it shows knowledge on the part of the CEO of this company
9 that one of the top ten referred targets is a pill mill
10 operator.

11 Furthermore, things change after Sunrise Lee
12 becomes the regional manager based upon what we think is her
13 relationship with Dr. Madison. All of a sudden he becomes
14 Miss Brown's top subscriber.

15 So I just want to lay out the history of her
16 efforts with Dr. Madison, what she's reporting back to
17 headquarters, that she continues to see him and basically
18 continues to strike out until Sunrise Lee shows up.

19 THE COURT: Okay.

20 MS. WILKINSON: Your Honor, there's no evidence
21 that this went to Dr. Kapoor. This is to Mr. Babich, and
22 it's a detailed report about her interactions. And talking
23 about -- shared a pill mill, and this other doctor, Dr. Ring,
24 he seems a little more responsible, he also runs a pill mill.

25 It seems extraordinarily prejudicial to our client

1 when there's no evidence he was aware of that.

2 THE COURT: I'm going to let him have this.

3 MR. TYRRELL: May I be heard on this?

4 My client hadn't even started working at the
5 company at this point, so I'm going to renew the request for
6 a limited instruction, if I may make my record, I
7 understand --

8 THE COURT: Can I have a suggestion before and then
9 you can make the record.

10 MR. TYRRELL: Sure.

11 THE COURT: So I would be willing to give them a
12 legal instruction to the effect that once that -- that they
13 should focus on the -- they should be aware of the fact that
14 not everything goes to everybody, and unless and until a
15 conspiracy is proven, that's the way it is. But once a
16 conspiracy is proven, it all comes in as to everybody that's
17 on the conspiracy from the time they join.

18 So if you guys want to craft that over lunch, I'm
19 happy to give something like that.

20 MS. WILKINSON: Could we just ask that you say
21 racketeering conspiracy and not just a conspiracy.

22 THE COURT: Sure.

23 MS. WILKINSON: Thank you.

24 THE COURT: Figure out the law. I'm not going to
25 give it -- I would normally wing it on an instruction, but

1 given the conspiracy charge in the racketeering case, I'm not
2 willing to do it. But if you want to craft something, that
3 I'm happy to do it.

4 MR. TYRRELL: May we wait to publish the document
5 to the jury until that instruction is given? I think it's
6 important to give it simultaneously.

7 THE COURT: No. Lunch is in an hour.

8 MS. MINER: There's also --

9 MR. TYRRELL: One -- my last point is I understand
10 Mr. Wyshak's train analogy. I never used it myself, BUT I
11 understand it. BUT there's not a strict liability standard
12 for acts of co-conspirators. There's a foreseeability
13 concept that goes along with it. And I appreciate Your Honor
14 giving A temporal limiting instruction, that's helpful, but I
15 think going forward, you know, I think his idea of what acts
16 are attributable to what co-conspirators in his view I think
17 is a little broader than the law.

18 MR. WYSHAK: Well, the case is U.S. v. Bain. It's
19 the First Circuit.

20 THE COURT: I actually think he's right about the
21 law. If you want to brief it beyond that, you can.

22 MR. KENDALL: I have a different issue.

23 THE COURT: She's first.

24 MS. MINER: Thank you.

25 This document also contains hearsay within hearsay.

1 Even in the paragraph about Dr. Madison she's talking about
2 his medical assistants. "He has agreed to try and help me
3 out, but I know he is afraid after -- outbursts. In this
4 paragraph, she's talking about all these other things she has
5 heard from people in different people's offices that we don't
6 know who they are.

7 MR. WYSHAK: You know, it goes to the knowledge of
8 Babich and --

9 MS. MINER: My client wasn't even there.

10 MR. WYSHAK: -- and the other executives of what
11 the caliber of doctors are, and now Dr. Madison becomes one
12 of their premier national speakers, this pill mill operator.

13 THE COURT: Keep your voice down.

14 MR. TYRRELL: You found your voice finally.

15 MR. WYSHAK: Sorry.

16 It goes to their knowledge. Whether it's true or
17 not, this is what she's reporting.

18 THE COURT: Yes. So I will also -- in fact, I will
19 right now give the hearsay limiting instruction because that,
20 I feel like I can do that without getting into too much
21 trouble.

22 MR. KENDALL: I have a separate issue.

23 I don't think he's proven yet she joined the
24 conspiracy. She may have joined it after this. At the time
25 she sends this, there's no indication that she's looking to

1 sell drugs to people who are medically unnecessary, to bribe
2 someone, pr to do anything. He does not have -- she's not a
3 member of the conspiracy. So she's not saying this in
4 furtherance. I think his timing is off. I don't know when
5 she joins the conspiracy.

6 MS. MINER: I don't think she was even identified
7 as a co-conspirator.

8 MR. WYSHAK: Well, she is --

9 MS. WILKINSON: She doesn't believe she is and
10 there hasn't been a foundation for it.

11 THE COURT: Well, she doesn't have to believe that
12 she's a --

13 MR. KENDALL: But you need to lay a foundation she
14 does something factually to show she has the intent to
15 distribute drugs, bribe or commit insurance fraud. I don't
16 think she's done that yet.

17 MR. WYSHAK: I don't think that every statement
18 that's made needs to be admitted as a co-conspirator
19 statement. The reason that this is being admitted is for the
20 fact that it was said, and it shows knowledge on the part of
21 other members of the conspiracy. Evidence prior to -- I
22 mean, assuming this conspiracy did not begin in August,
23 although I think other evidence will show that there have
24 been -- I think Matt Napoletano will testify that he
25 initially told Dr. Kapoor that using a speaker program was a

1 way to get money in the pocket of doctors and they did have a
2 speaker program prior to this.

3 I think that statements made, even if they
4 theoretically were prior to the conspiracy, are admissible to
5 show, again, the nature of the relationship between the
6 parties, the criminal intent that develops as a result.

7 MS. WILKINSON: Your Honor, there's two different
8 ways to get it in. Co-conspirator statements and then as you
9 just said --

10 MR. WYSHAK: It's --

11 MS. WILKINSON: Excuse me. Can I finish -- I
12 respectfully disagree, it's very broad. If it is on notice,
13 which sounds like he was changing, it certainly doesn't come
14 in against all the people that aren't on this email. He just
15 changed the entire basis for it coming in. She has not been
16 proven to be a co-conspirator. They have not shown this is a
17 statement in furtherance. So if it is for notice, it should
18 be only as to the people who were on email to show their
19 state of mind at the time.

20 MR. KENDALL: May I add one thing?

21 THE COURT: No, his turn.

22 MR. LAZARUS: 801(d)(2)(D), it's not just a
23 co-conspirator declaration. She is also an agent and it
24 comes in on that exception.

25 MS. MINER: But, Your Honor, that's the basis -- my

1 client wasn't even there, so she can't be an agent of the
2 people that are not there.

3 MR. KENDALL: She's not the agent for Joe Rowan.

4 MR. TYRRELL: Or my client, who was not even there.

5 MR. KENDALL: Your Honor, we're missing an
6 important fact of the government's theory. If Burlakoff
7 takes over the national sales operation, he becomes this
8 corrupt influence and gets everybody. He doesn't take it
9 over until --

10 MR. WYSHAK: That's not our theory.

11 MR. KENDALL: If I could finish without
12 interruption.

13 This is before -- Napoletano is going to say the
14 speaker program was being run correctly at this time. This
15 was a good speaker program. The crime of the conspiracy
16 didn't start until after August 1. Burlakoff comes in, I
17 think, October in the new role.

18 MR. WYSHAK: He's hired in June.

19 MR. KENDALL: If I could finish please, Fred.

20 They have to lay a foundation that there's a
21 factual basis to think people are actually conspiring and
22 breaking the law. We've heard nothing as of August 1 to
23 establish that.

24 MR. WYSHAK: So Burlakoff --

25 MR. KENDALL: Babich is going to testify in another

1 week or two. If they lay the foundation, they can put it in
2 with Babich, but there's no reason to put it in now when
3 there's no --

4 MR. WYSHAK: I think the witness is perfectly
5 competent to testify about an email that she sent to the CEO
6 of this company who is lead defendant's right-hand man and
7 confidant.

8 Furthermore, Your Honor, he is hired in June of
9 2012. The reason he is promoted to senior VP of sales is
10 because his southeast region did so well, which is where
11 Mr. Rowan works, and particularly did well utilizing the
12 speaker program that had been in existence prior to that.

13 This was not a scheme that Alec Burlakoff starts in
14 September of 2012. This is something that was ongoing.

15 THE COURT: This is what I'm going to do for the
16 time being.

17 She can testify about it. We're not going to put
18 it in front of the jury. We'll figure out if there's a
19 limiting instruction at lunch.

20 And she'll still be on at noon, right?

21 MR. WYSHAK: Well --

22 THE COURT: On direct?

23 MS. WILKINSON: You don't have another hour on
24 direct with you her, do you?

25 MR. WYSHAK: I have a lot of stuff to go through,

1 but I think that this is, you know --

2 THE COURT: She can testify about it. I'm going to
3 let you show it to the jury, but I want to figure out -- I
4 don't want to show it to the jury until we figure out if
5 there's an appropriate limiting instruction that goes with
6 it.

7 MR. KENDALL: Your Honor, I don't mean to be
8 difficult, but I'm going to be --

9 THE COURT: Of course you don't. You never do.

10 MR. KENDALL: What is the basis for the admission?
11 Are you finding that the conspiracy has been established as
12 of August 1?

13 THE COURT: No. I'm finding that it is a
14 communication from her to him, and whether it comes in -- it
15 comes in as her impressions of what's happening, and then who
16 it comes in against is what I want to hash out over a
17 limiting instruction.

18 MR. KENDALL: If I may respectfully, Your Honor,
19 her state of mind and his state of mind prior to the
20 conspiracy is irrelevant at this point.

21 THE COURT: There hasn't been enough evidence to
22 determine the concept of the conspiracy.

23 MR. KENDALL: Right. So it can't come in for the
24 state of mind. If I may suggest, they're going to have
25 Babich in a week. Let them lay the proper foundation. You

1 can't take them back once it's -- you can let it in with
2 Babich.

3 THE COURT: I am going to let her testify about
4 what her impressions -- that she was asked by Babich what she
5 was doing with these doctors and that she conveyed to him her
6 impressions of these people.

7 MR. TYRRELL: Without reading the document.

8 THE COURT: Without reading the document.

9 MS. WILKINSON: We still object to that basis, Your
10 Honor.

11 MR. KENDALL: Can we get it without saying the word
12 "pill mill"? If he does it orally, it's as bad as the --

13 THE COURT: No. I believe she's entitled to
14 testify what her impression of these doctors was.

15 MR. KENDALL: If it's not in furtherance of the
16 conspiracy, who cares what her state of mind is?

17 THE COURT: The first point is they get to build
18 their case. I'm going to give another limiting instruction
19 on the hearsay. We're not going to show the document or read
20 the document, but she can say that she was asked this by
21 Babich and she gave him the following information, and we'll
22 figure out about the exhibit at lunch.

23 MR. KENDALL: Can we preserve our objection instead
24 of popping up --

25 THE COURT: Yes.

1 MR. WYSHAK: Just one more, Your Honor.

2 If this had occurred and there were not subsequent
3 conduct between the members of the conspiracy and Dr.
4 Madison, I would say that they had a legitimate gripe. But
5 Dr. Madison becomes one of their most prolific writers, one
6 of their highest paid speakers. He is termed a national
7 thought leader. And this all happens after she has
8 communicated to Babich, the CEO, that this guy is running a
9 pill mill.

10 THE COURT: I'm going to let you have it generally
11 speaking. What I'm concerned about is whether or not they
12 get a limiting instruction about who it goes to. Okay?

13 So get the testimony, I'll give an instruction.
14 (End of sidebar.)

15 THE COURT: You guys are going to know the law
16 after this trial is over. But hearsay is not generally
17 admissible. So what somebody tells somebody else who is not
18 on the witness stand is not generally admissible if it's
19 coming in for the truth of the matter asserted. But if
20 she -- but you can testify as to what you heard, but that
21 doesn't mean it's true. It just means it's what she heard or
22 what her impression was.

23 So there's going to be some testimony that comes in
24 that will be based on things that she has been told or heard,
25 but the person that told it to her or that she heard it from

1 is not on the witness stand so it doesn't come in for the
2 truth of the matter asserted. But you can consider it for
3 basically her state of mind, what she was thinking as a
4 result of hearing that information. You can't conclude that
5 the information was true because that person is not on the
6 stand. You haven't heard from them. They haven't been
7 cross-examined. Okay?

8 So that's an instruction you'll get over and over
9 again, but that's sort of the gist of it; that there's some
10 information that comes in for the limited purpose of what's
11 on her mind, but it doesn't come in for the truth unless the
12 witness that actually gave her the information is on the
13 stand. Okay?

14 Go ahead, Mr. Wyshak.

15 BY MR. WYSHAK:

16 **Q.** So, again, directing your attention to Exhibit 2 and to
17 that first email to you from Mike Babich, is it fair to say
18 he's giving you an instruction?

19 **A.** I can't see the email. Yes.

20 **Q.** And what is his instruction to you?

21 MS. WILKINSON: Your Honor, I'm going to object.
22 The witness is looking at, therefore, reading the document
23 after what we just discussed.

24 MR. WYSHAK: She can use the document to refresh
25 her recollection.

1 THE COURT: She can look at the document to refresh
2 her recollection, but at this point the document is not going
3 to be read to the jury until we sort out the ancillary issues
4 around the document.

5 MR. KENDALL: I don't think she said she had a
6 failure of recollection, Your Honor.

7 THE COURT: She can look at the document as long as
8 she's not testifying -- as long as she's not reading it.

9 BY MR. WYSHAK:

10 Q. Do you have that memorized?

11 A. No, but I know the gist of it.

12 MR. KENDALL: Objection.

13 THE COURT: She's testified -- ask her about the
14 document without her looking at it. She said she has no
15 failure of recollection.

16 Q. Did you receive an instruction from Mike Babich on or
17 about August 1?

18 A. Yes. It was just asking for a brief update on the high
19 decile physicians that we were supposed to be calling on.

20 So he was asking per, you know, where I was at, why
21 they weren't prescribing or, you know, where they were in the
22 sales process.

23 Q. And he gave you a list of physicians he wanted you to
24 report about. Is that fair to say?

25 A. Yes.

1 **Q.** Was Dr. Madison one of those physicians?

2 **A.** Yes.

3 **Q.** And did you, in fact, respond to his email and report on
4 Dr. Madison?

5 **A.** Yeah, I did. I reported, you know.

6 MR. KENDALL: Objection, Your Honor. Just --

7 THE COURT: Yes. Go ahead.

8 **Q.** And tell us the substance of what you reported back to
9 Mike Babich about Dr. Madison.

10 **A.** I took it as an opportunity to let somebody in a higher
11 position know what I was experiencing and that I was
12 uncomfortable with this office. I explained to him that I
13 thought the operation at Dr. Madison's office was a fairly
14 shady one and that I was uncomfortable there, and that
15 basically he wouldn't give me the time of day and was not
16 really interested in Subsys.

17 **Q.** And is it fair to say that you reported weekly on your
18 efforts with Dr. Madison?

19 **A.** Yeah. It was asked of us for a while to make these
20 weekly reports to update Mike, I suppose, about where we were
21 in the process with these people.

22 MR. WYSHAK: Okay. And if we could go to Exhibit
23 668. Just for the witness. If we could go to number 7.

24 **Q.** Without telling us the substance of this document, can
25 you tell us the date of it?

1 **A.** I believe it was probably sometime in August.

2 MR. WYSHAK: I'm sorry, could you go back to the
3 first page and highlight the header.

4 THE WITNESS: It was September 17 --

5 MR. WYSHAK: Okay.

6 THE WITNESS: -- 2012.

7 MR. WYSHAK: And then go to page 7. I'm sorry,
8 number 7.

9 **Q.** So on September 17, you were again reporting to
10 Mr. Babich; is that fair to say?

11 **A.** Yes.

12 **Q.** On your efforts with Dr. Madison?

13 **A.** Yes.

14 **Q.** And if you look at paragraph 7 there, you're reporting on
15 numerous efforts that you made with Madison between August
16 and September; is that correct?

17 **A.** Yes.

18 MS. WILKINSON: Your Honor, I'm going to object.
19 Again, referring to a document before she says she needs her
20 recollection refreshed because it's got the same issue --

21 MR. WYSHAK: I'll offer the document in evidence,
22 but they objected, so I'm trying to do this --

23 THE COURT: Yes. Because I'm -- the document is
24 going to come in. I just want to resolve the issues we
25 discussed at sidebar.

1 So go ahead, Mr. Wyshak.

2 BY MR. WYSHAK:

3 **Q.** As of the date that you reported to Mr. Babich on
4 September 17, were you successful in getting Dr. Madison to
5 write a prescription for Subsys?

6 **A.** No, not at all.

7 **Q.** All right. Now, when Sunrise Lee becomes your
8 supervisor, does she come to Chicago at some point?

9 **A.** Yeah. She made a trip to Chicago fairly immediately
10 after the sales meeting.

11 **Q.** Okay. And did you have a conversation with her about
12 Dr. Madison?

13 **A.** Yeah. It was requested that for this particular meeting
14 they wanted me to set up a lunch with Dr. Madison, and her
15 coming into town, I understood, was specifically to meet with
16 him.

17 **Q.** And did you do that?

18 **A.** Yes.

19 **Q.** And what happened at that lunch?

20 **A.** So I catered in lunch for the office. She came with me.
21 I had the usual talk with him about product information. She
22 chatted with him a little bit, and then at the end of the
23 meeting she slipped him her business card and basically said,
24 If you would like to chat with me about this, kind of off the
25 record, give me a call.

1 **Q.** Okay. And did you subsequently have a conversation with
2 her about Dr. Madison?

3 **A.** Yeah. So Dr. Madison had reached out to her at some
4 point after that and had requested that they get together and
5 meet at a bar for drinks or appetizers or whatever.
6 Initially she expected me to attend this with her. I had
7 plans to go out of town and then she kind of agreed, yeah,
8 maybe it would be better if I just meet with him myself. He
9 may feel more comfortable that way. So she went and met with
10 him I think at a hotel bar downtown.

11 **Q.** And how would you describe Ms. Lee's sales technique by
12 this time?

13 **A.** I would say that she did not have a very scientific- or
14 product-focused approach. I think it was more social in
15 nature. Definitely kind of sexually suggestive.

16 MR. HORSTMANN: Objection, move to strike.

17 THE COURT: If you could lay a foundation about
18 what she observed.

19 MR. WYSHAK: Yes.

20 **Q.** What causes you to say her technique was sexually
21 suggestive?

22 MR. HORSTMANN: Objection.

23 THE COURT: Overruled. He can lay the foundation.

24 **A.** I think, I mean, in the way she dressed, and again with
25 just --

1 **Q.** What did she wear?

2 **A.** On the verge of professional, but it was, you know, a lot
3 of times cleavage or just a little more sexual than I would
4 say an average sales rep would typically dress. And
5 particularly for meetings we took, I remember showing up to a
6 dinner that Alec Burlakoff was attending and I had on, you
7 know, a button-down shirt and pants, what I would normally
8 wear to work, and she asked me why I was dressed so
9 conservatively.

10 **Q.** Anything else about her sales technique?

11 **A.** No. Just like I said, that it was always kind of very
12 social in nature and often included things like meeting
13 outside of the office, or, you know, outside of a work
14 setting.

15 **Q.** And did she go out for drinks with Dr. Madison?

16 **A.** Yes.

17 **Q.** And after that meeting with Dr. Madison, did she report
18 something to you?

19 **A.** Yes. So it was the next week and she said that
20 Dr. Madison had agreed at this meeting or this occasion that
21 she went out with him to write Subsys and that I was now
22 supposed to be spending my time focusing on Dr. Madison and,
23 you know, spending my efforts and time there with him.

24 **Q.** So he was supposed to be your whale, so to speak?

25 **A.** Yes.

1 **Q.** And did you, in fact, start spending more time at
2 Dr. Madison's office?

3 **A.** Yeah. I mean, it was basically the direction that I
4 could pretty much forget about the rest of my territory and
5 my prescriptions needed to be coming from him.

6 **Q.** How often would you go to his office after this meeting
7 with Sunrise?

8 **A.** At least once a week, sometimes twice a week, depending
9 on the week. More in the beginning of his writing and then,
10 you know.

11 **Q.** Did Sunrise Lee ever go with you to Dr. Madison's office?

12 **A.** Yeah. There were several occasions where she either went
13 with me or just kind of showed up as I was there, and, you
14 know, I didn't know or expect that she was going to be there.

15 **Q.** And how successful did you become with Dr. Madison?

16 **A.** So at this point Dr. Madison definitely started writing a
17 lot of Subsys. You know, most of his patient population was
18 certainly opiate-tolerant and it seemed to me like he was
19 taking every opportunity to put patients on Subsys that he
20 could.

21 **Q.** Did he have a lot of cancer patients?

22 **A.** No.

23 **Q.** Do you know what percentage of his patient population
24 started using Subsys?

25 **A.** It would be speculation, and I don't know that I was

1 there long enough to make that judgment.

2 **Q.** Okay. So did Dr. Madison become a speaker?

3 **A.** Yeah. So then he was appointed as the main speaker in
4 Chicago.

5 MR. WYSHAK: All right. Could we put 669 up.

6 **Q.** Do you see that on the screen, Ms. Brown?

7 **A.** I can't read it.

8 **Q.** You can't read it?

9 MR. WYSHAK: Let's go to the bottom of the page of
10 that first email. So it will be -- if you just go to the
11 bottom and highlight the header.

12 **Q.** Do you see the header there?

13 **A.** Yes.

14 **Q.** Okay. And what is this?

15 **A.** It's an email that I sent to Sunrise on October 4.

16 **Q.** All right. October 4, 2012?

17 **A.** Yes.

18 **Q.** Correct?

19 **A.** Yes.

20 MR. WYSHAK: And now if we go to the next page,
21 which is this email itself, highlight the last paragraph.

22 **Q.** Are you reporting to Sunrise --

23 **A.** Yes.

24 **Q.** -- about Dr. Madison?

25 **A.** Yeah.

1 MR. WYSHAK: Your Honor, I offer 669.

2 MR. HORSTMANN: No objection.

3 THE COURT: Anyone? It's admitted.

4 (Exhibit 669 admitted into evidence.)

5 MR. WYSHAK: All right. Can we put it on the
6 juries' screen.

7 Q. Could you read that highlighted paragraph?

8 A. I said, "Dr. Madison did ask that I lay off his Illinois
9 clinic for now but asked that I camp out in his Indiana
10 clinic on Wednesdays. He did mention that the Fentora rep
11 made lots of promises to him regarding speaker programs that
12 he never followed through with. I think it is important that
13 we keep Dr. Madison happy where Fentora couldn't."

14 Q. Okay. So you had a conversation with Dr. Madison about
15 being a speaker?

16 A. Yes.

17 THE COURT: Sorry. What's the date of this email,
18 please?

19 MR. WYSHAK: October 4, 2012.

20 If we could move up the email chain to the next
21 one, up. Highlight the header for the next one.

22 Q. So the next document in this chain is an email from Alec
23 Burlakoff to you and to Sunrise Lee; is that correct?

24 A. Yes.

25 Q. And you had cc'd Mr. Burlakoff on that previous email; is

1 that correct?

2 **A.** Yes.

3 MR. WYSHAK: If we could highlight the body of that
4 email.

5 **Q.** So Mr. Burlakoff says, "Let's make good on our commitment
6 to use Dr. Madison as a Subsys thought leader. I am very
7 comfortable utilizing him as much as once a week, and he is
8 clearly an expert in the ROO market. His knowledge,
9 expertise and ability to provide a credible presentation on
10 the ROO market is well documented over the past decade.
11 Let's move forward with getting programs scheduled
12 specifically using Dr. Madison to present via SciMedica as
13 soon as possible. Lastly, please work with Sunny to assist
14 you in putting these programs together in a most efficient
15 manner." Is that correct?

16 **A.** Yes.

17 **Q.** Sunny is who?

18 **A.** Yes.

19 **Q.** Who is Sunny?

20 **A.** Sunrise Lee.

21 **Q.** So let's talk about this concept that Dr. Madison is a
22 thought leader.

23 Did he strike you as a thought leader in the
24 medical community in Chicago?

25 **A.** No, certainly not. He was, as I mentioned earlier, sort

1 of notorious in the area of running the type of clinic that
2 he ran. And I remember being concerned at the time that I
3 would be unable to get other physicians within the community
4 to attend these programs because everybody knew who
5 Dr. Madison was and certainly didn't respect him or the way
6 that he practiced medicine.

7 **Q.** And did that turn out to be true, that you had a
8 difficult time getting people to come hear him speak?

9 **A.** Yes, that was true.

10 MR. WYSHAK: If we go up to the last, the top of
11 this page.

12 **Q.** That's an email that is part of this chain that's asking
13 Matt Napoletano --

14 **A.** Yes.

15 **Q.** -- to get Dr. Madison trained to speak on Subsys; is that
16 correct?

17 **A.** Yes.

18 **Q.** And this is October 5, right?

19 **A.** Yes.

20 **Q.** And you are cc'd on this as well as Sunrise Lee; is that
21 correct?

22 **A.** Mm-hmm, yes.

23 MR. WYSHAK: All right. If we could go to 1764.
24 Go to the header.

25 **Q.** This is a email from you?

1 **A.** Yes.

2 **Q.** To Sunrise Lee?

3 **A.** Yes.

4 **Q.** About Dr. Madison?

5 **A.** Yes.

6 MR. WYSHAK: I offer it.

7 THE COURT: Any objection?

8 MR. KENDALL: No.

9 THE COURT: He said no objection. It's admitted.

10 (Exhibit 1764 admitted into evidence.)

11 MR. WYSHAK: Can we highlight the body?

12 **Q.** So you're reporting to Sunrise Lee about Dr. Madison; is
13 that correct?

14 **A.** Yes.

15 MR. WYSHAK: Can you highlight that first
16 paragraph.

17 **Q.** So you say, "I spent today in the offices of Dr. Ring and
18 Madison to follow up with and help process PAs." What's a
19 PA?

20 **A.** Prior authorization, as I mentioned earlier, things that
21 insurance companies put in place when they don't initially
22 want to cover a product.

23 **Q.** And what involvement would you have in processing a prior
24 authorization for a physician?

25 **A.** A lot of times there was a lot of confusion surrounding

1 this paperwork and/or irritation that they had to do one at
2 all. And so it was a lot of working with office managers and
3 things like that to basically give them advice as to how to
4 deal with these.

5 **Q.** And what did you actually do?

6 **A.** It was a lot of, you know, discussing prior auths that
7 had been shot back. They would give reasons sometimes as to
8 why we had a letter of medical necessity that had been
9 approved for use, and, you know, I would give them that and
10 help with, you know, suggestions for filling that out and
11 just getting it back to the insurance company.

12 **Q.** Did you get access to patient files in Dr. Madison's
13 office?

14 **A.** Yeah, they typically had a stack of Subsys patients set
15 aside with prior auths that had been shot back. So yes, I
16 saw those.

17 **Q.** And what would you do in relation to the patient files?

18 **A.** His office staff, I think Jennifer was her name, and I
19 would going through those and put the prior auths together
20 along with a medical letter of necessity if it was needed and
21 have it faxed back to the insurance company.

22 **Q.** Did you understand at this point in time the rules
23 regarding HIPAA?

24 **A.** I understood HIPAA rules from the place of being a
25 chiropractor, certainly, but I didn't know what the rules

1 were from the perspective of being a salesperson, and it had
2 been communicated to us that this was what we were supposed
3 to be doing.

4 **Q.** And who communicated that to you?

5 **A.** It was initially mentioned at the national sales meeting
6 by Alec. At one point I was still not having a lot of
7 success with Dr. Madison right away, and he suggested that I
8 call one of the other reps, her name was Erica, in
9 California, who I think had really gotten on board with
10 filling out these prior auths, or at least assisting with
11 them in offices. So he had me call her in order for her to
12 give me the directive that that's what I should be doing
13 rather than having him give it to me directly.

14 But it was, like I said, something that was almost
15 implied or maybe directed that this is what we were supposed
16 to be doing.

17 MR. WYSHAK: Can we put up 504. Blow it up. I
18 don't know if you can see -- let's blow up just the first
19 part.

20 **Q.** Do you recognize this document?

21 **A.** Yes. This is the approved medical necessity letter that
22 we had all been using.

23 **Q.** And is it a document you were familiar with?

24 **A.** Yes.

25 **Q.** Did you use this document in trying to get prior

1 authorizations for Dr. Madison's patients?

2 **A.** Yeah, it was something we were able to hand out to the
3 physician in his office for them to use.

4 **Q.** And when did you get this document?

5 **A.** It was emailed to us from somebody at corporate. I don't
6 remember who, specifically, that person was.

7 MR. WYSHAK: I offer it, Your Honor.

8 MS. MINER: Your Honor, can we get a timeframe?

9 **Q.** When did you first begin using this type of a letter?

10 **A.** I don't remember when, specifically, this was given to
11 us. I don't know.

12 **Q.** Okay. Well, was it at least at the time that you were
13 doing prior authorizations for Dr. Madison?

14 **A.** Yes.

15 **Q.** Did you have it?

16 **A.** Yes.

17 MR. WYSHAK: I offer it.

18 MS. MINER: Objection.

19 THE COURT: Basis?

20 MS. MINER: Timing, and she doesn't know where she
21 got it or when she got it. Lack of foundation.

22 THE COURT: Overruled.

23 (Exhibit 504 admitted into evidence.)

24 MR. WYSHAK: All right. So this is sort of a --
25 can you put it up on the screen.

1 **Q.** So this is sort of a fill-in-the blank, right?

2 **A.** Yes.

3 **Q.** And who have would actually filled in these blanks on
4 this type of a letter?

5 **A.** Either Dr. Madison or one of his office staff that were
6 familiar with the patient in the case.

7 **Q.** Okay. Did you assist in drafting these letters?

8 **A.** I was able to make suggestions, you know. A lot of times
9 something like this would list past medications that had
10 failed or for some reason or another a patient might not be
11 able to take a medication via certain routes, orally or
12 whatever, so those were reasons that were given to put on
13 these letters.

14 **Q.** So this is a letter that Insys wrote, correct?

15 **A.** Yes.

16 **Q.** And if you look at the first full paragraph there, it
17 says, "He/she," the second sentence, "He/she has difficulty
18 swallowing and digesting oral medications and is in almost
19 constant and severe pain."

20 What is the significance of difficulty swallowing
21 and digesting oral medication?

22 **A.** So because Subsys was administered sublingually, you
23 bypass the need to swallow the medication. And so it had
24 been figured out by somebody at some point that that
25 statement was a successful statement in getting these

1 approved by the insurance companies.

2 **Q.** It was a way to get coverage, right?

3 **A.** Yes.

4 **Q.** You told us before that a lot of these patients were
5 taking Oxycodone or OxyContin?

6 **A.** Yes.

7 **Q.** Right. And are those pills?

8 **A.** Yes.

9 **Q.** And were these the kind of patients who were being
10 switched to Subsys?

11 **A.** Yes.

12 **Q.** So if you can swallow a pill, you don't need the
13 sublingual spray, do you?

14 **A.** Yes. Or yes, I agree with what you said.

15 **Q.** Yet Dr. Madison would sign these letters?

16 **A.** Yes.

17 MR. WYSHAK: Could you go down a little bit in this
18 document. Just scroll down. Put it back to normal size.
19 That second full paragraph, little above that.

20 **Q.** So this letter goes on to say, "In an effort to control
21 his pain and improve his quality of life, he/she has been
22 prescribed the following medications." And what's the point
23 of including that information?

24 **A.** So this is just meant to showcase the list of other
25 products that the patient had been on, I think mostly

1 indicating that the patient had been on these products and
2 their pain was still not adequately controlled and therefore
3 needed Subsys.

4 **Q.** And did you assist in gathering that kind of information
5 from patient files?

6 **A.** Yeah. I mean, it was the medication list. Whatever the
7 current medication list was in the file is what they were
8 instructed to put there.

9 MR. WYSHAK: Okay. And can we do the bottom.

10 **Q.** The last part of this reads, "A combination of obviously
11 the above drugs at the highest dose available tends to abate
12 pain fairly well. However, severe breakthrough pain
13 continues to be a problem with a frequency that is
14 debilitating to this unfortunate patient."

15 It doesn't say "breakthrough cancer pain," does it?

16 **A.** No.

17 **Q.** And who came up with this language, "breakthrough pain"?

18 **A.** I don't know.

19 **Q.** But this is on the form you got; is that correct?

20 **A.** Yes.

21 **Q.** From Insys?

22 **A.** Yes.

23 **Q.** So they dropped the "cancer," correct?

24 **A.** Yes.

25 **Q.** All right. And, again, this letter is sent to who?

1 **A.** It's something that we were able to give to doctors at
2 offices that were managing prior auths.

3 **Q.** And what did the doctor do with the letter?

4 **A.** Fill it out and send it back to the insurance company
5 along with the prior authorization paperwork.

6 MR. WYSHAK: Okay. I'm sorry. If we go to back to
7 now Exhibit 1764, which I believe is evidence.

8 **Q.** You report in this email to Sunrise Lee that, "I will
9 spend each Tuesday and Wednesday in Dr. Madison's office.
10 Tuesday is a good day to go in and help process PA issues
11 from the prior week and that way I do not have to spend time
12 doing it Wednesday when the most important thing for me to do
13 is stick by Madison's side and collect scripts."

14 What does that mean?

15 **A.** So Tuesdays his office manager was usually in the Indiana
16 office alone doing paperwork like this. It was an
17 opportunity for me to go in there and help her with the PAs
18 that had come through for Subsys.

19 Wednesday was a day when Dr. Madison was in there
20 seeing patients and was the day that I was instructed to be
21 in there with him, you know, helping with paperwork that was
22 required to send a prescription in.

23 **Q.** Okay. When you say "stay by his side," does that mean
24 physically?

25 **A.** Yeah.

1 Q. Would you physically?

2 A. Yeah, sometimes, mm-hmm.

3 Q. And the next paragraph says, "Were you able to speak with
4 Dr. Madison last week regarding speaker training? Just give
5 me a heads-up so I know where we stand on that for tomorrow
6 when I spend the day with him."

7 So who was it that was talking to Dr. Madison about
8 speaker training?

9 A. I mean, it was -- I was asking Sunrise if she knew
10 anything about it, but I think it was maybe Matt Napoletano
11 that was supposed to be coordinating this with him.

12 I do remember that we had kind of an issue getting
13 him trained, and I don't know where the problem was in timing
14 with that.

15 MR. WYSHAK: Okay. Can we put 1762 up on the
16 screen and highlight the heading. Just the heading. Sorry.

17 Q. So this is a email from Teresa Grasso. Did you know who
18 she was?

19 A. I don't remember her specifically, but apparently she
20 worked for SciMedica, which was the group that did the
21 logistics for the planning of these speaker programs.

22 Q. And it's to you and Mr. Burlakoff?

23 A. Yes.

24 Q. Copying Sunrise Lee and Matt Napoletano, right?

25 A. Yes.

1 **Q.** And it regards his speaker training?

2 **A.** Yes.

3 MR. WYSHAK: I offer it.

4 THE COURT: Any objections?

5 MR. TYRRELL: No objection.

6 MS. WILKINSON: No objection.

7 MR. KENDALL: No objection.

8 MR. HORSTMANN: No objection.

9 MS. MINER: No objection.

10 THE COURT: It's admitted.

11 (Exhibit 1762 admitted into evidence.)

12 MR. WYSHAK: Can I have the body, just the body --
13 the body.

14 **Q.** So essentially this is telling you that he's set up for
15 speaker training, correct?

16 **A.** Yes.

17 **Q.** And was this a prerequisite before he could actually do
18 it?

19 **A.** Yes.

20 **Q.** Now, I'd like to bring your attention to an event at a
21 restaurant called Roka.

22 **A.** Yes.

23 **Q.** And what was that location?

24 **A.** Roka was a restaurant in River North, downtown Chicago.

25 **Q.** And do you know who owned it?

1 **A.** Yes. John Kapoor.

2 **Q.** And how did that location fit in to speaker programs?

3 **A.** It was the location that all of our speaker programs took
4 place. I don't remember who specifically made the
5 reservations there, but it was just the expectation that all
6 the Chicago programs happen there.

7 **Q.** Okay. And do you recall attending a dinner at Roka with
8 Dr. Madison, Ms. Lee, Alec Burlakoff, Larry Dillehay?

9 **A.** Yes.

10 **Q.** Was that a speaker program?

11 **A.** I believe it was intended to be, yes.

12 **Q.** Okay. Was this sometime after Dr. Madison was trained?

13 **A.** Yes, I believe so.

14 **Q.** And can you tell us -- first you went to dinner; is that
15 correct?

16 **A.** Yes.

17 **Q.** And to the best of your recollection, who attended the
18 dinner?

19 **A.** It was myself, Sunrise, Larry Dillehay, Matt Napoletano,
20 and then Jody Havens, who was the Chicago south rep at the
21 time.

22 **Q.** Mm-hmm. And were there -- there was a group of doctors
23 there who were listening to Dr. Madison speak about Subsys?

24 **A.** Not that I remember.

25 **Q.** Yet he was being paid to attend that event?

1 **A.** I think so.

2 **Q.** And approximately how long did the dinner last?

3 **A.** I mean, we were probably there for at least a couple of
4 hours.

5 **Q.** Okay. And what happened after the dinner ended?

6 MR. HORSTMANN: Your Honor, may we know when this
7 was?

8 THE COURT: Time, please.

9 **Q.** To the best of your recollection, when would you say this
10 occurred?

11 **A.** It was sometime around Halloween. I don't know when the
12 specific date was.

13 **Q.** So we know that based upon the last exhibit, which was
14 October 5, that Dr. Madison had been qualified to be a
15 speaker, I guess, right?

16 **A.** Yes.

17 **Q.** The training was set up for that day?

18 **A.** (No response.)

19 MR. WYSHAK: And if we could go quickly to 681.
20 Just blow up the header there.

21 **Q.** What is this email?

22 **A.** I don't know what it's regarding specifically, but I see
23 that they had speakers listed on there as of October 9, 2012,
24 and Dr. Madison was the speaker.

25 **Q.** But that's from this guy Sean Yu?

1 **A.** Yes.

2 **Q.** To all of the sales staff, right?

3 **A.** Yes.

4 **Q.** And you are cc'd on there, H. Brown. That's you?

5 **A.** Yeah.

6 **Q.** And this is dated October 9, correct?

7 **A.** Yes.

8 MR. WYSHAK: I offer it.

9 THE COURT: Any objection?

10 MS. MINER: No.

11 THE COURT: It's admitted.

12 (Exhibit 681 admitted into evidence.)

13 MR. WYSHAK: Can we show the body and publish it
14 for the jury.

15 **Q.** And who is Sean Yu? Did you know him?

16 **A.** I think he had something to do with sales analytic, but I
17 don't remember him specifically.

18 **Q.** And he's saying, "Sales team. Included is a list of the
19 new Subsys adopters just from yesterday. Congratulations to
20 all the SSPs who have achieved this."

21 And there are two new doctors, right?

22 **A.** Yes.

23 **Q.** One is Roberts and one is Madison?

24 **A.** Yes.

25 **Q.** Madison is yours, right?

1 **A.** Yes.

2 **Q.** And you're an SSP?

3 **A.** Yes.

4 **Q.** So, again, we're in October and you believe that this
5 event after Dr. Madison was trained as a speaker, after he
6 started writing Subsys, this event occurred shortly after
7 that?

8 **A.** Yes.

9 **Q.** So now you told us you were at Roka, you had dinner.
10 What happened after that?

11 **A.** After dinner, myself, Sunrise and Dr. Madison went to a
12 club called The Underground. We walked in and sat down. Got
13 bottle service and --

14 **Q.** Let's back up a little bit. So what is The Underground?

15 **A.** The Underground is kind of -- or it used to be a trendier
16 club in Chicago, you know, open really late.

17 **Q.** And what is bottle service?

18 **A.** It's when you sit down and a waitress brings you a bottle
19 of whatever it is that you ordered, some kind of liquor,
20 usually, champagne maybe, with mixers and all of that, and
21 you have a table to yourself and you're just basically
22 serving yourself and being waited on.

23 **Q.** And how much does bottle service generally cost?

24 **A.** Depends on where you are, but I would say probably at
25 least 500 and up.

1 **Q.** And who went to The Underground?

2 **A.** It was me, Jody, the south rep, and Sunrise and
3 Dr. Madison.

4 **Q.** All right. So another sales rep, Jody Havens?

5 **A.** Yes.

6 **Q.** Was she at the dinner at Roka?

7 **A.** Yes.

8 **Q.** And what happened at The Underground?

9 MR. HORSTMANN: Objection. Sidebar.

10 THE COURT: All right. We're going to have a
11 sidebar now. I think I'm going to release them for lunch.

12 So your lunch is scheduled to come up at 12:00, so
13 you may have to entertain yourselves with no food for seven
14 minutes, and we'll come back at quarter of 1:00. Okay?

15 (Jury exits the courtroom.)

16 **SIDEBAR:**

17 MR. HORSTMANN: Your Honor, we're now at The
18 Underground. The government's case has gone, in my opinion,
19 as follows. Dr. Madison has been approached by various sales
20 reps at this point that they're at The Underground. He is a
21 prescriber of Subsys. At this point in The Underground he is
22 in the speaker program. And the only point in putting the
23 rest of The Underground story in is to --

24 THE COURT: Okay. Hold on.

25 MR. HORSTMANN: -- my client's reputation. It's

1 not a bribe. It's not a kickback.

2 THE COURT: I don't know what the rest of the story
3 is.

4 MR. KENDALL: There was a lap dance.

5 MS. MINER: They're going to say it was a lap
6 dance.

7 MR. WYSHAK: I think the evidence, Your Honor,
8 clearly shows that the witness had made repeated weekly
9 attempts to solicit Dr. Madison to prescribe Subsys and she
10 had struck out until Ms. Lee comes on to the stage, so to
11 speak, and she goes out for these drinks with Dr. Madison and
12 all of a sudden now Dr. Madison is prescribing Subsys and
13 he's on the speaker payment plan.

14 And they go out to this restaurant, and instead of
15 acting as a professional, a person who is in a high
16 management position in this pharmaceutical company which is
17 marketing this very dangerous drug, she starts performing a
18 lap dance on Dr. Madison. He has his hands on her breasts
19 and they are kissing and it's, you know, apparent that she is
20 using her physical --

21 THE COURT: Wiles.

22 MR. WYSHAK: -- physical attributes to get
23 business. I think it's as clear as the day is long.

24 MR. HORSTMANN: The deal was already done. It's
25 not anything --

1 THE COURT: I know, Mr. Horstmann. I get why you
2 don't like this piece of evidence, but I think it comes in.

3 Is that the best argument that you have?

4 MR. HORSTMANN: Your Honor, if it's a bribe, if
5 that's what his case is, he's already on board. The
6 government's case is in.

7 THE COURT: It's supposed to be a speaker program,
8 right?

9 MR. WYSHAK: Yeah, and he's on board. This is the
10 beginning.

11 MR. HORSTMANN: She'll testify differently on
12 cross.

13 MR. WYSHAK: He could have stopped writing at any
14 minute if he didn't get the inducement.

15 THE COURT: Speaker program, nobody shows up. So
16 instead of him leaving, he gets a lap dance. It's not savory
17 but --

18 MR. KENDALL: Your Honor, he gets paid \$1700 or
19 \$1600, apparently.

20 THE COURT: Plus a lap dance.

21 MR. KENDALL: That's the whole point, Your Honor.
22 People socialize in the business world. There's no evidence
23 here that she was prostituting herself and trading a social
24 relationship for business. Lots of people socialize with
25 their clients and their customers. There's nothing

1 inappropriate about that. Your Honor, to assume that it's an
2 act of prostitution --

3 THE COURT: I'm not assuming it's an act of
4 prostitution.

5 MR. KENDALL: She's socializing with him in a way
6 many of us here would not think appropriate. That's not to
7 say that's an inducement or a quid pro quo.

8 MR. WYSHAK: This is a frivolous argument.

9 THE COURT: That's something the jury can decide.

10 MR. HORSTMANN: Under 403 --

11 THE COURT: That is your best argument.

12 MR. HORSTMANN: It might be more probative if this
13 occurred before the prescriptions, before the speaker
14 program. But to put it afterwards, it tilts the other way.
15 It's clearly more prejudicial than probative. He's already
16 on board.

17 MR. KENDALL: It's a gratuity, not a bribe, Your
18 Honor, and a gratuity is not relevant to the case.

19 MR. TYRRELL: You should tone it down a little bit.
20 You don't have to use the words "lap dance." Can we say
21 "dance provocatively"? Do we have to get to "fondling her
22 breasts"?

23 THE COURT: Yes, I think --

24 MR. WYSHAK: She's entitled to testify to what she
25 observed.

1 MR. TYRRELL: But that's a characterization.

2 MR. WYSHAK: This is a young kid. She just
3 graduated college. It's her first job in the pharma
4 industry, and this is how her managers --

5 THE COURT: Look. I think you're entitled to it,
6 but I think that it's a fair point that if you could tone it
7 down, could we avoid the touching of the breasts, just sort
8 of give a general overview of what some of us might deem to
9 be inappropriate physical interaction with her. If you want,
10 sitting on his lap --

11 MR. HORSTMANN: It's like adult entertainment.

12 MR. WYSHAK: Further --

13 MR. TYRRELL: He also hasn't laid a foundation that
14 she even knows what a lap dance is.

15 THE COURT: Do you want him to lay the foundation?

16 MR. WYSHAK: I would also say this, Your Honor. If
17 this were, as Mr. Horstmann wants to argue, a single event
18 where she went out and had drinks with him and he wrote and
19 that was the end of it, that might be a better argument. But
20 this is a continuing course of conduct.

21 THE COURT: I'm going to let you have it in. I
22 applaud Mr. Horstmann and his comrades for doing as best a
23 job as they can with what is a clearly very probative but
24 also prejudicial piece of evidence.

25 So I just -- given the inflammatory nature of it,

1 just ratchet it down a little bit. You can have it.

2 MR. WYSHAK: Okay.

3 THE COURT: Wait. As long as here we're here, on
4 the other email -- I forget which the exhibit number it is.

5 MR. KENDALL: Exhibit 2.

6 MR. STOJILKOVIC: There was another one.

7 MR. KENDALL: And there was a later version of
8 that.

9 THE COURT: It seems to me from the evidence that
10 I've heard that she joined the conspiracy by early October
11 but not by -- not in September. So I think that -- I think
12 it comes in but under an agency theory. So that would be
13 against those for whom she is an agent.

14 So I will give a limiting instruction on people
15 that weren't with the company and that it's an agency theory.

16 MR. STOJILKOVIC: Your Honor, on that we would just
17 object that she was an agent of Insys. Insys is not a
18 defendant in the case. It is true that our client is the
19 chair -- they're chairmen of the board. That doesn't mean
20 that anything any employee does is attributable or admissible
21 against him.

22 MR. KENDALL: Who does the Court find is the
23 principal that's responsible for her knowledge? I don't
24 think -- it's not within the relevance of any of our clients
25 that she's going to report this to them. My client is a rep

1 out in Florida.

2 THE COURT: Right. So you're entitled to a
3 limiting instruction on it.

4 MR. KENDALL: It's clearly a 401 issue. It's --

5 MR. WYSHAK: It's clearly relevant. It's not 401.

6 MR. KENDALL: Relevant to who is the issue.

7 MR. WYSHAK: I suggest that --

8 THE COURT: Well, it's hard to sort out relevance
9 because we don't know -- was it Babich or Burlakoff?

10 MR. WYSHAK: Babich.

11 THE COURT: So we don't know what Babich did with
12 it, okay? But I will give you a limiting instruction at this
13 point in time that it certainly goes to what she told Babich.
14 I think it goes to what she told Kapoor.

15 MS. MINER: But nobody else.

16 MR. STOJILKOVIC: What I would note is what is
17 clear on the issue is that email -- in terms of what I've
18 seen in the evidence, it was never forwarded to John Kapoor.
19 So I object to the instruction that says kind of
20 constructively this is notice to Kapoor. I think to say this
21 is notice to Babich, if Mr. Babich comes here and says, you
22 know, that he relayed it or something, that's a different
23 issue. But I haven't seen this in the discovery. The email,
24 I am confident, never goes to my client.

25 MR. KENDALL: I don't think any of our five --

1 MS. MINER: No. Mine wasn't even there.

2 THE COURT: I don't know what the next testimony
3 is, but she passes it on to Babich. I think it comes in for
4 that.

5 MR. KENDALL: We don't know if Babich is in the
6 conspiracy yet.

7 THE COURT: We don't, but he's testifying after
8 her, so I'm going to let them build their case. But I will
9 give a limiting instruction on the agency theory.

10 MR. TYRRELL: As to people who were not employed at
11 the time.

12 MS. MINER: She didn't report to.

13 THE COURT: Not employed or that -- at the moment
14 that it is only -- what do you want to do about Kapoor? I
15 don't want to be out on the limb on this, under an agency
16 theory, not a co-conspirator theory.

17 MR. LAZARUS: I think, Your Honor, I
18 would recommend, like you said, it would only be to people
19 she reported to, not to people employed -- not as a factual
20 question limited for them but in terms of admissibility, I
21 think that's the safe way to go.

22 MR. KENDALL: Who do you contend she's reporting to
23 at this time period?

24 MR. LAZARUS: She --

25 THE COURT: Certainly Babich. What about Kapoor?

1 MR. LAZARUS: So Your Honor is inquiring -- my
2 position as to Babich and Kapoor, Your Honor, I think under
3 the agency theory the Court has to find by a preponderance
4 that there is an agency relationship between them.

5 And so here, John Kapoor was the chairman of the
6 board. There will be testimony where early in the case the
7 testimony would be that he was very involved in all of this
8 and that he controlled Babich's actions.

9 So Kapoor is the chairman of the board, Babich acts
10 on his behalf, Babich is doing his bidding when he's telling
11 the employees things, and so she's reporting to Babich.

12 MR. STOJILKOVIC: If I may --

13 THE COURT: Is it for me or the jury to determine
14 the agency relationship?

15 MR. LAZARUS: For the Court to determine
16 admissibility, you have to find by a preponderance that
17 there's an agency relationship existing.

18 MR. STOJILKOVIC: Your Honor, may I be heard on
19 that?

20 As you heard in opening, part of our defense is
21 that our client didn't know about certain things. Now he was
22 involved and the testimony -- we're talking about a four-year
23 period. Some things he knew about. Some things he didn't.
24 It is inappropriate to admit any statement provided to anyone
25 at Insys on the theory that it goes to our client's

1 knowledge, I don't know how we can -- when our client
2 disputes ever having notice of that fact.

3 And I also think it's unnecessary at this point,
4 because we have Mr. Babich coming, we know that her direct
5 report at that time, it was to Hemenway and Babich, and that
6 email is Hemenway/Babich. They can pick it up from Babich
7 on.

8 THE COURT: I think that's the safer way to do it.

9 MR. WYSHAK: It's black letter law, though, Your
10 Honor, I mean, especially in a RICO conspiracy. Not every
11 member of the conspiracy has to know what every other member
12 of the conspiracy was doing. That's the nature of RICO.

13 MR. KENDALL: It's not a co-conspirator statement.

14 THE COURT: I completely agree with you, but she's
15 not a member of a conspiracy.

16 MR. WYSHAK: But Babich is.

17 THE COURT: Then it would come in --

18 MR. WYSHAK: It doesn't mean that the conspiracy
19 existed --

20 THE COURT: All I'm suggesting is that we put it in
21 against her, against Babich. Defer on the rest of them until
22 we've heard from Babich.

23 MR. WYSHAK: Okay.

24 MR. KENDALL: Your Honor, can I just say two
25 things? With respect to the agency issue, it has to be

1 within the agent's responsibilities to be gathering this
2 information and relaying it.

3 MR. WYSHAK: He instructed her to do it.

4 MR. KENDALL: If -- if you don't interrupt me,
5 Fred.

6 So if I'm the chairman of a company and I've got a
7 million employees, everything told to a million people is not
8 within the scope of what they're going to relay to me.

9 THE COURT: I'm not totally sure that's true,
10 right, but he makes a good point, that it's not the
11 corporation that's charged.

12 MR. KENDALL: Right.

13 THE COURT: The whole part --

14 MR. KENDALL: Yes. The second point, Your Honor,
15 is, I'm just harping on this, a statement to Babich, if
16 people aren't in a conspiracy with him is, I would say,
17 highly prejudicial without any relevance to the case. He can
18 know all the wrong things in the world. If he's not part of
19 a conspiracy, who cares?

20 THE COURT: So I'm limiting it. She's on the stand
21 now. Something has come to first and something has to come
22 second. You can decide whether she's the chicken or the egg.
23 But what I'm going to do now is it's going to come in for the
24 fact this is what she said to Babich. I will give a limiting
25 instruction that at this point in time she's giving the

1 information to Babich and that you can't -- however you guys
2 want to word it, but the gist of it is that there isn't any
3 basis to hold it against the others at this point. Now, what
4 Babich says he does with it --

5 MR. KENDALL: May I ask, then, Your Honor, so we
6 can reduce this amount of colloquy amongst us, if the
7 government could now give us a proffer of when is the date
8 they think the conspiracy is established and what facts
9 they're relying on to show it as of that date?

10 MR. WYSHAK: I think you have criminal conduct
11 right from the beginning, Your Honor. I think she testified
12 that, you know, in her initial training back in March they
13 were already telling them to engage in off-label marketing.

14 MR. KENDALL: That's not charged in this case, Your
15 Honor.

16 MR. WYSHAK: It doesn't matter whether it's
17 charged.

18 MR. KENDALL: It's not even illegal.

19 MR. WYSHAK: Who says it's not illegal?

20 THE COURT: Hold on, hold on. There may well have
21 a conspiracy in March, I don't know yet, but she's not a
22 member of it in March.

23 MR. KENDALL: Our clients aren't a part of that.

24 MR. WYSHAK: If she's engaged in selling the
25 product pursuant to their instructions to, you know, drop the

1 cancer, you know, mention it the first time you talk to a
2 doctor then just talk about breakthrough pain after that, to
3 engage in HIPAA violations by reviewing patient files, you
4 know, this company from day one is trying to cut corners to
5 sell this product.

6 THE COURT: That may be. But in terms of
7 co-conspirator hearsay statements in March, there isn't
8 enough now to make her a member of the conspiracy. The HIPAA
9 violations I don't think happened until October.

10 MR. WYSHAK: With her.

11 THE COURT: You may be able to establish a
12 conspiracy, but I don't at the moment --

13 MR. WYSHAK: Okay.

14 THE COURT: -- conspiracy is October 4.

15 MR. WYSHAK: I'm not saying that the government
16 concedes that the conspiracy did not begin until after Alec
17 Burlakoff --

18 THE COURT: I'm not going to make them do a proffer
19 at this point. If you want a limiting instruction given at
20 quarter of 1:00 or tomorrow, whenever you want it -- how much
21 longer do you have with her?

22 MR. WYSHAK: Probably an hour.

23 MR. TYRRELL: When the doctor comes in.

24 THE COURT: We're not going to get to the next
25 break. If you want a limiting instruction around that

1 document, someone is going to have to draft it over lunch.

2 MR. TYRRELL: One last thing on behalf of
3 Mr. Horstmann, one last thing. I'm just asking that
4 Mr. Wyshak speak with Ms. Brown and tell her that she should
5 not say "lap dance" or talk about fondling breasts, dancing
6 provocatively or in a sexually suggestive manner or something
7 like that.

8 THE COURT: He doesn't have to cleanse it to the
9 point of Mr. Rogers' neighborhood.

10 MR. WYSHAK: I'll ask her not to use the term "lap
11 dance." She will say she was sitting on him, and he was
12 touching parts of her body inappropriately. How is that?

13 THE COURT: That's fine.

14 MR. LAZARUS: What time would you like us back?

15 THE COURT: I'm going to bring the jury back at
16 quarter of 1:00. So if you want me to look over the limiting
17 instruction, come back at 12:35 or 20 of.

18 MR. LAZARUS: Thank you, Your Honor.

19 (End of sidebar.)

20 (Recess taken 12:11 p.m.)

21

22

23

24

25

1 ***** AFTERNOON SESSION *****

2 THE CLERK: All rise for the jury.

3 (The jury enters the courtroom.)

4 THE CLERK: Court is back in session. Please be
5 seated.

6 THE COURT: Mr. Wyshak, do you want me to begin
7 with the limiting instruction?

8 MR. WYSHAK: Sure.

9 THE COURT: As you all may recall, there were two
10 exhibits this morning that the witness testified about. We
11 had a long sidebar about it. You actually weren't shown
12 those exhibits because I deferred ruling on them. I am now
13 going to admit those two exhibits with the following
14 instructions.

15 Exhibits 2 and 668 are not being admitted for the
16 truth of the matters asserted. At this time, you may only
17 consider them for state of mind and notice as of the date of
18 the emails to Ms. Brown, Mike Babich, and with respect to
19 Exhibit 668, Alec Burlakoff.

20 So in other words, the people that were copied on
21 the email got the information and you can consider that
22 information for the fact that they were put on notice for
23 what was in the email.

24 Again, you can't accept what was in the emails as
25 truth because it's just her conveying her impressions of what

1 she -- what was what was in her mind.

2 Is that satisfactory?

3 MR. TYRRELL: Yes, Your Honor. Assuming it
4 preserves our objection.

5 THE COURT: Go ahead, Mr. Wyshak.

6 MR. WYSHAK: Thank you, Your Honor.

7 BY MR. WYSHAK:

8 Q. Ms. Brown, before we broke we were talking about the
9 events that occurred at the Underground --

10 A. Yes.

11 Q. -- after the Roka dinner. Again, tell us who went to the
12 Underground?

13 A. It was myself, Sunrise, Jodi Havens, and Dr. Madison.

14 Q. I think you told us you got bottles served to you at a
15 table?

16 A. Yes.

17 Q. What happened after that?

18 A. Jodi and I were up dancing just kind of back and forth.
19 At some point we turned around. Sunrise had just been
20 hanging with Dr. Madison mostly, and she was sitting on his
21 lap, kind of bouncing around, and he had his hand sort of
22 inappropriately all over her on her chest. At that point,
23 Jodi and I got a little bit uncomfortable, I think, and
24 decided to leave.

25 Q. How did that impact you as an employee of this company?

1 MR. HORSTMANN: Objection.

2 THE COURT: Basis?

3 MR. HORSTMANN: Relevance. 403.

4 THE COURT: Overruled.

5 **A.** It was a disappointment. Certainly something that I as
6 an employee was not willing to engage in, and I would assume,
7 you know, most of the other women as well.

8 MR. HORSTMANN: Objection. Move to strike.

9 THE COURT: Certainly something that I as an
10 employee was not willing to engage in. That's her answer.
11 Anything that she assumes after that is stricken from the
12 record and you shouldn't consider it.

13 BY MR. WYSHAK:

14 **Q.** Well, did you feel like you were getting a message about
15 what tactics to use to market this product?

16 MR. HORSTMANN: Objection.

17 MS. WILKINSON: Objection.

18 THE COURT: Sustained.

19 BY MR. WYSHAK:

20 **Q.** Is it fair to say that Dr. Madison engaged in these
21 so-called speaking events after he was trained?

22 **A.** Yes.

23 **Q.** And between the time he was trained in October and the
24 time you left in December, approximately how many times do
25 you think you set up a speaker event for him?

1 **A.** I think it was probably five or six times.

2 MR. WYSHAK: Could we put 1759 up on the screen.

3 And if we can scroll down to the initial email and zoom in on
4 the header.

5 BY MR. WYSHAK:

6 **Q.** Okay. So this is an email from Alec Burlakoff to you; is
7 that correct?

8 **A.** Yes.

9 **Q.** November 8?

10 **A.** Yes.

11 **Q.** If you can, take a look at the body. Zoom in on the
12 body. Talking about a dinner involving Dr. Madison, correct?

13 **A.** Yes.

14 MR. WYSHAK: I offer it, Your Honor.

15 MS. WILKINSON: No objection.

16 THE COURT: It's admitted.

17 (Government Exhibit No. 1759 admitted.)

18 BY MR. WYSHAK:

19 **Q.** So Alec Burlakoff is asking you to send him the names of
20 the five clinicians that were at Roka.

21 Is that where you always held these dinners, at
22 Mr. Kapoor's restaurant?

23 **A.** Yes.

24 **Q.** He's asking you for the five clinicians who were there.
25 What's that all about?

1 **A.** Generally with the speaker program, it's expected that
2 the attendees of the program are other physicians that would
3 be potentially writing the product at some point. So they're
4 there to learn.

5 But that was not always the case or the directive
6 with the speaker programs that we were having with
7 Dr. Madison. In fact, I don't think I ever had one where
8 there were five clinicians in attendance.

9 **Q.** So I think you told us that this company SciMedica was
10 running these speaker programs for a while?

11 **A.** Yeah. They were running the logistics, I think.

12 **Q.** And this appears to be a program that had not been
13 scheduled. Is that what's going on here?

14 **A.** I wouldn't remember the details of it, but it looks like
15 at this point we were still using SciMedica to put the pieces
16 of it together.

17 **Q.** He says, "I am working to get this covered as an official
18 ISP. We were late submitting the program due to
19 Dr. Madison's last-minute confirmation."

20 **A.** Yeah. I'm remembering that this happened. It was sort
21 of a last-minute thing. I don't know if it was Sunrise or
22 somebody that was in town to meet with him, but it happened
23 kind of last minute, so we didn't have time to put the
24 paperwork through SciMedica that you would normally submit to
25 the have a speaker program. But it was allowed to happen.

1 **Q.** Why was it such an emergency to set up a speaker program
2 for him?

3 **A.** I think Dr. Madison was probably anxious to get paid for
4 a program, and I think Insys was probably anxious to pay him
5 to do one.

6 MS. WILKINSON: Objection. Move to strike.

7 THE COURT: It's sustained. You can't testify
8 about things that might have been in somebody else's mind.
9 She thinks he was probably anxious to get paid. And then
10 strike her answer with regards to what she thought Insys
11 might have wanted.

12 BY MR. WYSHAK:

13 **Q.** I notice Mr. Burlakoff uses the term clinicians, five
14 clinicians.

15 **A.** Mm-hmm.

16 **Q.** Does that mean that they weren't doctors who were
17 prescribing writers for opiates?

18 MS. WILKINSON: Objection. Again to what he meant
19 by that.

20 THE COURT: You can ask her about her
21 understanding.

22 BY MR. WYSHAK:

23 **Q.** Were there five doctors who were actual prescribers of
24 opiates who attended a dinner like this?

25 **A.** No. There might have been friends of the doctor, but

1 mostly it was never physicians that were assigned to me, you
2 know, that I was supposed to be selling Subsys to.

3 **Q.** Were these dinners that you were putting together for
4 Dr. Madison events intended to educate the medical community
5 in the Chicago area?

6 **A.** Yes.

7 **Q.** They were?

8 **A.** They were, yes.

9 **Q.** Is that what happened?

10 **A.** No.

11 **Q.** Why don't you explain to us what really happened?

12 **A.** My understanding of the definition, "clinicians," was
13 that it was something that was something that was never fully
14 defined. I knew I would have trouble getting physicians from
15 the Chicago community to attend. I'm sure I communicated
16 that to the company at some point.

17 So it was just kind of considered acceptable for
18 the physician to invite sort of whomever he wanted to these
19 events, whether it be other doctors who were friends of his.
20 At one time there was someone who did like colonoscopies that
21 came. So a friend of his again, but obviously not involved
22 with Subsys at all.

23 **Q.** Okay. And you had a slide deck for these presentations,
24 correct?

25 **A.** I didn't. But I think he was supposed to have had one,

1 yes.

2 **Q.** He was supposed to have a slide deck?

3 **A.** Yeah.

4 **Q.** That's like a PowerPoint?

5 **A.** Yes.

6 **Q.** Did he actually get up and make a speech using the
7 PowerPoint?

8 **A.** No. If Subsys was mentioned at all, he would usually
9 stand up and say this is a product that I support. The
10 company is sponsoring this dinner, but there was usually very
11 little product information given at these dinners.

12 **Q.** So how would you actually describe these events?

13 **A.** Mostly as social outings. Just a reason to gather people
14 and have dinner and pay Dr. Madison for it.

15 **Q.** And why would the company want to pay Dr. Madison to take
16 him out to dinner with some of his friends?

17 MS. WILKINSON: Objection, Your Honor.

18 MR. WYSHAK: Okay. I'll withdraw that. That's a
19 bad question.

20 BY MR. WYSHAK:

21 **Q.** Did you discuss with Sunrise Lee the fact that you really
22 couldn't get real doctors to attend these events?

23 **A.** I don't remember who I specifically discussed it with,
24 but yeah, it was certainly a concern that was raised.

25 MR. KENDALL: Objection, Your Honor. Move to

1 strike. Doesn't remember who it was.

2 THE COURT: I'm not going to strike it. The jury
3 heard the answer.

4 BY MR. WYSHAK:

5 Q. Did you have an understanding based upon your role as a
6 salesperson and organizer of these events why the company
7 would subsidize dinner for Dr. Madison and his friends?

8 MS. WILKINSON: Objection.

9 MR. KENDALL: Objection.

10 THE COURT: Overruled.

11 A. It was made clear that the speaker programs were going to
12 be the new vehicle for garnering partnerships with physicians
13 at the national sales meeting that we went to in Arizona.
14 And that the idea was that these weren't truly meant to be
15 educational programs, but they were meant to be rewards
16 basically for the physicians that we had on board
17 prescribing. So it was sort of a tit for tat relationship.

18 BY MR. WYSHAK:

19 Q. And did Dr. Madison, in fact, prescribe Subsys as a
20 result of this relationship that you began with him?

21 A. Yes.

22 MR. WYSHAK: Could we put 1758 up on the screen and
23 zoom in on the header.

24 Q. This is an email from Sunrise Lee to you, correct?

25 A. Yes.

1 **Q.** Dated November 9, 2012?

2 **A.** Yes.

3 **Q.** If you could, go to the body. And that's about
4 Dr. Madison, right?

5 **A.** Yes.

6 MR. WYSHAK: I offer it.

7 THE COURT: Any objection?

8 MS. MINER: No.

9 THE COURT: It's admitted.

10 (Government Exhibit No. 1758 admitted.)

11 MR. WYSHAK: Can we publish it?

12 BY MR. WYSHAK:

13 **Q.** All right. So here Sunrise Lee is asking you, "I need to
14 know ASAP: How many prescriptions Madison has written to
15 date; confirmed scheduled speaker programs for each speaker;
16 requested scheduled programs for each speaker."

17 What's she asking you there? What did you
18 understand she was concerned about?

19 **A.** My perception of this email was that pressure was being
20 put on me to continue pressuring Dr. Madison to keep up his
21 prescribing habits. The idea was that for physicians who
22 were speakers, that if we were going to continue --

23 MR. HORSTMANN: Objection. Move to strike.

24 THE COURT: I'm not going to strike it. But she
25 answered your question. So ask your next question.

1 BY MR. WYSHAK:

2 Q. I think you were trying to explain the linkage --

3 THE COURT: What was she asking you? What did you
4 understand? Her perception of the email was that pressure
5 was being put on her to continuing pressuring Dr. Madison.
6 And then ask your next question.

7 BY MR. WYSHAK:

8 Q. Okay. Was there a linkage between giving doctors speaker
9 events and their prescription-writing habits?

10 A. Yes. So it was expected that for physicians who were
11 being paid to speak for us that they maintain and/or continue
12 to exceed their old writing habit. So if there was a drop in
13 their prescription writing, it was immediately looked at and
14 questioned and then turned around on me to continue to put
15 pressure on him that if he's going to keep doing these
16 programs, he needs to keep his writing up.

17 Q. Okay. And did you receive some of that pressure from
18 Sunrise Lee?

19 A. Yes.

20 MR. WYSHAK: Could we put 1757 up on the screen.
21 And zoom in on the header.

22 BY MR. WYSHAK:

23 Q. So this is an email from you to SciMedica and Sunrise Lee
24 about Paul Madison, correct?

25 A. Yes.

1 MR. WYSHAK: I offer it, Your Honor.

2 MS. WILKINSON: No objection.

3 THE COURT: It's admitted.

4 (Government Exhibit No. 1757 admitted.)

5 MR. WYSHAK: Can we go to the body, please.

6 BY MR. WYSHAK:

7 Q. All right. So now this is November 12. "Here is a
8 last-minute request to do a speaking program for Dr. Madison
9 this Friday 11/16 at Roka Akor. Reservation has already been
10 made and Dr. Madison has been confirmed. Let me know if you
11 need anything else."

12 Is that fair to say?

13 A. What's that?

14 Q. Did I read that correctly?

15 A. Yes.

16 Q. So again, this is now at least the third speaker event
17 we've talked about?

18 A. Probably.

19 Q. Was this another one of those social events?

20 A. Yes.

21 MR. WYSHAK: Can we put up 1765. Again zoom in on
22 the header.

23 BY MR. WYSHAK:

24 Q. This is from Alec to you, Alec Burlakoff to you; is that
25 correct?

1 **A.** Yes.

2 **Q.** Dated November 13?

3 **A.** Yes.

4 **Q.** Go to the body, to the last line. And again you
5 reference Dr. Madison; is that right?

6 **A.** Yes.

7 MR. WYSHAK: I offer it.

8 THE COURT: Any objection? Admitted.

9 (Government Exhibit No. 1765 admitted.)

10 MR. WYSHAK: Can we publish it? Can we go to the
11 header for this one? I'm sorry. For that email.

12 BY MR. WYSHAK:

13 **Q.** So originally you send this to Sunrise Lee and cc Alec
14 Burlakoff, correct?

15 **A.** Yes.

16 **Q.** And your last line there is, "Busy day at Madison's
17 office today. Will report back with a bunch of RXs tonight."

18 What's that mean, RXs?

19 **A.** That's shorthand for prescription.

20 **Q.** So Dr. Madison is completing his part of the deal here?

21 **A.** Yes.

22 **Q.** If you go up to the top, Burlakoff says, "Thanks for the
23 update, all sounds great." Is that correct?

24 **A.** Yes.

25 MR. WYSHAK: Can we put 1755 up. Zoom in on the

1 header.

2 **Q.** This from Sunrise Lee to your sales team, correct?

3 **A.** Yes.

4 **Q.** And also blind copied to you, correct?

5 **A.** Yes.

6 **Q.** Dated November 26, 2012.

7 MR. WYSHAK: And if you go to the body. Zoom in on
8 the body.

9 **Q.** It's about the speaker program, correct?

10 **A.** Yes.

11 MR. WYSHAK: I offer it.

12 MS. WILKINSON: No objection.

13 MR. TYRRELL: No objection.

14 MR. HORSTMANN: Sidebar, Your Honor.

15 THE COURT: Sidebar?

16 MR. HORSTMANN: Please.

17 THE COURT: Okay.

18 (The following was held at sidebar.)

19 MR. HORSTMANN: Your Honor, there are going to be
20 instances of emails, which it's our position were actually
21 authored by Alec Burlakoff that he sends out over Sunrise's
22 email address. I think this is the first one that has been
23 offered. I would ask the Court to mark it for i.d.. And if
24 Burlakoff is here to authenticate it, it should come in. But
25 otherwise, I don't think it should unless my client

1 testifies.

2 MR. WYSHAK: It says it's from SLee@atInsys.com.

3 MR. KENDALL: He'd wake up and get on her laptop
4 and send her emails.

5 THE COURT: What's the basis for not admitting it?

6 MR. KENDALL: She didn't send it.

7 THE COURT: It looks like she sent it.

8 MR. KENDALL: Your Honor, Burlakoff is their
9 witness. They know he was sending out emails fraudulently.
10 To give it to the jury and say it's her email when it's
11 Burlakoff's.

12 MR. HORSTMANN: It doesn't sound like her, Your
13 Honor.

14 THE COURT: No. It sounds like a different voice.
15 You're free to argue that. It came from her email address.

16 MS. WILKINSON: But they know that, Your Honor.

17 MR. WYSHAK: They know what?

18 MS. WILKINSON: They know that Alec Burlakoff got
19 on Sunrise Lee's email late at night when they were together
20 and sent out emails under her name. If they don't --

21 MR. WYSHAK: I inquired because I think Peter had
22 brought it up. According to Alec, it was right at the very
23 beginning when she started. He showed her how to use email.
24 And he did a few emails, showed her how to send them out.
25 And according to him, that was it.

1 MS. WILKINSON: This is right around the time she
2 started.

3 MR. WYSHAK: This is now November 26.

4 MR. KENDALL: It's 11:45 p.m.

5 MR. HORSTMANN: Maybe Mr. Vien will have to testify
6 because I was told something different.

7 MR. WYSHAK: Really?

8 THE COURT: Mr. Wyshak is going to cross-examine
9 Mr. Vien?

10 MR. HORSTMANN: That will be fun.

11 MR. KENDALL: I think they'll be hugging each
12 other, Your Honor.

13 MS. WILKINSON: The narrative is that he would get
14 up late at night when they were together. This is an 11:45
15 p.m. email.

16 MR. WYSHAK: Whether or not she received it from
17 Sunrise Lee or from Alec Burlakoff, it's the content that I'm
18 interested in. Whether it's from him or her, it's a
19 co-conspirator statement, and it's admissible.

20 MS. WILKINSON: That's not really the point. The
21 point is he asked the question it's from Sunrise Lee, for the
22 jury to believe it was her statement.

23 THE COURT: Why don't you just rephrase it and say
24 it came from her email.

25 MR. WYSHAK: Okay.

1 MR. HORSTMANN: Prejudicial if it's not her.

2 THE COURT: You can deal with it on
3 cross-examination.

4 MR. WYSHAK: How does he get access to her laptop?

5 MR. KENDALL: He rolled over and started typing.

6 MR. WYSHAK: Sounds like aiding and abetting and
7 acting in concert.

8 MR. HORSTMANN: It's not in the office.

9 THE COURT: Just switch it up to the email. If you
10 want to make argument later on that you don't actually have
11 any idea when he is actually typing the keys.

12 (End of sidebar.)

13 BY MR. WYSHAK:

14 **Q.** Ms. Brown, again if I can direct your attention to the
15 header for this email.

16 THE COURT: This is going to be admitted.

17 (Government Exhibit No. 1755 admitted.)

18 BY MR. WYSHAK:

19 **Q.** So this appears to come from the mailbox or the email
20 account of Sunrise Lee. Is that fair to say?

21 **A.** Yes.

22 MR. WYSHAK: I offer it.

23 THE COURT: Admitted.

24 MR. HORSTMANN: Same objection, Your Honor.

25 THE COURT: Preserved. It's admitted.

1 MR. WYSHAK: If you could zoom in on the body.

2 BY MR. WYSHAK:

3 Q. This email says that, "We have for the most part depleted
4 our speaker program budget for 2012." And under "Important"
5 there he says, "Please do not submit any additional requests
6 for speaker programs to take place in 2012." And if you go
7 down about halfway, he's talking about planning for 2013; is
8 that correct?

9 A. Yes.

10 Q. And he says about halfway down, "I want a ridiculous
11 number of programs scheduled for January of 2013, and I want
12 them scheduled before the holiday break. This sets the tone
13 for our 'thought leaders' and reminds them all that Insys is
14 serious and ready to go for a big Subsys year in 2013. We
15 are not letting up. In fact, we are just getting started.
16 This vehement message to our thought leaders is an absolute
17 necessity in order to solidify an appropriate beginning to a
18 stellar 2013. Failure to get these programs for 2013
19 scheduled will unquestionably result in this territory's late
20 start and a PIP."

21 So what is a PIP?

22 A. A PIP is a performance improvement plan. So it's
23 something that's put in place for a salesperson when they're
24 considered to be underperforming. And it usually has
25 performance goals lined out for them that they have to

1 achieve by a certain timeframe. Otherwise, they'll typically
2 be fired.

3 **Q.** What was your reaction to the threat of being placed on a
4 PIP?

5 **A.** I'm sorry. What was that?

6 **Q.** What was your reaction to this threat of being placed on
7 a PIP?

8 **A.** You know, it's certainly kind of a threatening email, and
9 it was something that we were all -- or I, anyway, was
10 concerned about all the time. There were reps being let go
11 every week, and so it was something we were all concerned
12 about. And the directive to get the speaker programs and
13 things scheduled again just confirmed sort of the strategy
14 that was to be used to continue having these doctors write
15 for the next year.

16 MR. WYSHAK: Could we put up 195. If you could go
17 down to the -- scroll down to the bottom and put that header
18 up first.

19 BY MR. WYSHAK:

20 **Q.** So this is an email from Sunrise Lee to Alec Burlakoff;
21 is that right?

22 **A.** Yes.

23 **Q.** And regarding Dr. Madison?

24 **A.** Yes.

25 MR. WYSHAK: I offer it, Your Honor.

1 MR. HORSTMANN: I object, Your Honor. For purposes
2 of this witness, I object. How does this come in?

3 MR. WYSHAK: She's copied on it above.

4 MR. HORSTMANN: I'm sorry. I didn't see that.

5 THE COURT: Scroll up.

6 MR. HORSTMANN: Okay. Sorry. I withdraw the
7 objection.

8 THE COURT: It's admitted.

9 (Government Exhibit No. 195 admitted.)

10 MR. WYSHAK: If we can publish it and go to the
11 first one.

12 BY MR. WYSHAK:

13 **Q.** So this is Sunrise Lee telling Alec Burlakoff, "As you
14 know, Dr. Madison is a dedicated Subsys advocate who is
15 determined to get as many docs on board with Subsys as
16 possible. I know that our ISP budget is pretty much
17 depleted. However, Dr. Madison would like to do an
18 additional ISP" --

19 That's a speaker program, right, ISP?

20 **A.** Yeah.

21 BY MR. WYSHAK:

22 **Q.** -- "next week with some docs that he has outsourced."

23 Is that fair to say, she's --

24 **A.** Yes.

25 **Q.** So after the last exhibit we saw where Mr. Burlakoff

1 says -- or coming out of Sunrise Lee's account says no more
2 speaker programs, now she's asking for an additional one for
3 Dr. Madison?

4 **A.** Yes.

5 MR. WYSHAK: And if we can go back up to the top,
6 that header, zoom in.

7 **Q.** So the response is from Alec Burlakoff. He sends an
8 email to Desiree Hollandsworth.

9 Do you know who she was?

10 **A.** I only remember that she was involved towards the end
11 with coordinating these programs. I think maybe instead of
12 SciMedica. That's about all I remember.

13 **Q.** And you and Sunrise Lee are copied on this; is that
14 right?

15 **A.** Yes.

16 **Q.** And Mr. Burlakoff is essentially asking for Dr. Madison
17 to get another speaker event, correct?

18 **A.** Yes.

19 **Q.** And he says, "Dr. Madison is well known and highly
20 respected amongst Dr. Dilaha, Matt Napoletano, Insys, and the
21 medical community as a whole."

22 Was Dr. Madison highly respected amongst the
23 medical community in Chicago?

24 MS. WILKINSON: Objection. Foundation.

25 MR. HORSTMANN: Objection.

1 THE COURT: You're going to need to set a
2 foundation for that.

3 MR. WYSHAK: I think she's testified about it.

4 THE COURT: I think she has, too, but the question
5 still requires a foundation.

6 BY MR. WYSHAK:

7 Q. You knew many doctors in your role as a sales rep for
8 Insys?

9 A. Yes.

10 Q. You talked to them?

11 A. Yes.

12 Q. You asked them to come hear Dr. Madison speak?

13 A. Yes.

14 Q. As a result of those conversations, did you learn he had
15 a reputation in the medical community?

16 A. Yes.

17 Q. And what was that?

18 A. That he was not respected or practicing responsible
19 medicine.

20 Q. Mr. Burlakoff goes on in the second paragraph to say,
21 "Dr. Madison's strong efforts to facilitate the attendees of
22 this program may have come at an untimely juncture. But he's
23 been extremely instrumental in helping to bring ISPs together
24 by personally recruiting/confirming local physicians whom he
25 felt would be extremely responsive to our product."

1 Is that true?

2 **A.** He certainly brought people to the events, but they were
3 people who would have no reason whatsoever to write Subsys.

4 **Q.** His friends?

5 **A.** His friends.

6 MR. WYSHAK: Could we put 192 up and if we could go
7 to the header.

8 BY MR. WYSHAK:

9 **Q.** And this is from -- I'm sorry.

10 MR. WYSHAK: 92. Did I say 192? Sorry. There is
11 an email covering that? There it is. Okay. If we can zoom
12 in on the header.

13 **Q.** So again, this is from that individual, Sean Yu?

14 **A.** Mm-hmm.

15 **Q.** And to sales RSMs. That includes you?

16 **A.** No. That would be the regional sales managers. So
17 Sunrise.

18 MR. WYSHAK: If we can go to the body.

19 **Q.** Do you see the sort of spreadsheet that's attached here?

20 **A.** Yes.

21 **Q.** Was this a document that you would have access to?

22 **A.** Certain data files were sent out to us, eventually daily,
23 that included prescription data as far as what had been
24 written in the previous days by all of our physicians.

25 **Q.** So this would be sent to the RSMs. That's the regional

1 sales managers; is that right?

2 **A.** Yes.

3 **Q.** Would Sunrise Lee distribute this to the sales staff?

4 **A.** Yes, I believe so.

5 **Q.** And did this include information about your doctors?

6 **A.** Yes.

7 MR. WYSHAK: I offer it, Your Honor.

8 MR. HORSTMANN: I object, Your Honor unless this
9 witness can say she saw it.

10 BY MR. WYSHAK:

11 **Q.** Was this something that you saw in the ordinary course of
12 business, the spreadsheets about sales in your area?

13 **A.** Yes. Initially there was sales data sent out I believe
14 once a week on Fridays, and then eventually it changed to
15 every day sales data was sent out to all of us.

16 MR. WYSHAK: I offer it, Your Honor.

17 MR. HORSTMANN: Same objection, Your Honor.

18 THE COURT: I'm going to admit that. She says she
19 saw the data on a weekly if not daily basis. It's admitted.

20 (Government Exhibit No. 92 admitted.)

21 MR. WYSHAK: If we can publish it.

22 BY MR. WYSHAK:

23 **Q.** And then directing your attention to, the Bates number
24 here is 4750937 of the spreadsheet. It's about six pages in.
25 It's Bates Number 4750937.

1 MR. WYSHAK: Can we put the ELMO on? It might be
2 easier.

3 THE CLERK: You have to turn the power on down the
4 bottom.

5 MR. WYSHAK: I think you can see it now.

6 BY MR. WYSHAK:

7 Q. Can you see that on your screen?

8 A. Yes.

9 Q. So this is Dr. Madison. Is that fair to say?

10 A. Yes.

11 Q. And that's you, Holly Brown?

12 A. Yes.

13 Q. At this point in time, according to this document, he has
14 24 patients on Subsys?

15 A. Yes.

16 Q. Is that correct?

17 I'm also going to show you another spreadsheet
18 which is part of this exhibit. Can you see Madison there?

19 A. Yes.

20 Q. And that's you, Holly Brown?

21 MR. TYRRELL: What page?

22 BY MR. WYSHAK:

23 Q. You can see there the trend line for Dr. Madison; is that
24 right?

25 A. Yes.

1 MS. WILKINSON: Your Honor, we don't have that
2 attached to this. We don't know if we didn't print out the
3 right thing, but we don't have that spreadsheet attached.

4 THE COURT: Why don't you show it to her, please,
5 or them.

6 MR. WYSHAK: I'm sure they have that document, Your
7 Honor.

8 THE COURT: They may and they may not. But to move
9 things along, make sure they can see it now.

10 MS. WILKINSON: That's the problem. I don't have
11 any objection, Your Honor. I think there was some confusion,
12 but I don't have any objection.

13 THE COURT: That's fine. There's a lot of paper in
14 this case. These things are going to happen. I just want to
15 make sure you had ample opportunity to see it. Are you all
16 set?

17 MS. WILKINSON: I don't think anybody else has.

18 THE COURT: Does anybody else want to look at it
19 before he goes on?

20 MR. WYSHAK: Am I all set?

21 THE COURT: Has everyone seen it now that wants to?
22 Okay. Go ahead, Mr. Wyshak.

23 BY MR. WYSHAK:

24 Q. Just pointing out, Ms. Brown, so again it's Dr. Madison,
25 right?

1 **A.** Yes.

2 **Q.** And if you follow over on this side, they're graphing out
3 the trends for sales for doctors; is that right?

4 **A.** Yes.

5 **Q.** And this was information that was provided to you?

6 **A.** I don't remember this specifically, but we were always
7 aware of our trends, whether it was through this or other
8 data that we received.

9 **Q.** And this indicates that -- do you know how to read the
10 graph?

11 **A.** I don't know what timeframe this was over, but it's
12 looking like he was steady, dropped down, went back up. So
13 for whatever reason he dropped down in writing for a while,
14 but I don't know what the time period was.

15 **Q.** But you received this kind of data?

16 **A.** Yeah.

17 **Q.** Whether it was in this form or some other form?

18 **A.** Yes.

19 **Q.** Regarding the writing trends of your doctors; is that
20 right?

21 **A.** Yes.

22 MR. WYSHAK: Can we put 1760 up.

23 THE COURT: Mr. Wyshak, did you ask for 1760 or
24 1716?

25 MR. WYSHAK: 60, Your Honor.

1 THE COURT: Okay.

2 BY MR. WYSHAK:

3 Q. This is an email from you to Desiree Hollandsworth?

4 A. Yes.

5 Q. About Dr. Madison, right?

6 A. Yes.

7 MR. WYSHAK: I offer it.

8 THE COURT: Any objection?

9 MS. WILKINSON: None.

10 MR. TYRRELL: No objection.

11 THE COURT: It's admitted.

12 (Government Exhibit No. 1760 admitted.)

13 BY MR. WYSHAK:

14 Q. And this is dated December 12 of 2012?

15 A. Yes.

16 Q. Can you read it for us?

17 A. It says, "Hi, Desiree. Dr. Madison is wondering what
18 address you will be sending his speaker program checks to.
19 Let me know. Thanks, Holly."

20 Q. He's interested in getting paid?

21 A. Yes.

22 MR. WYSHAK: I'm almost done, Your Honor.

23 THE COURT: Do you want that exhibit admitted?

24 MR. WYSHAK: Yes. I'm sorry. Did I not offer it?

25 THE COURT: I don't think so. Any objections?

1 MS. WILKINSON: He did offer it.

2 THE COURT: Did he?

3 MS. WILKINSON: Yes.

4 THE COURT: Either way, it's admitted now.

5 BY MR. WYSHAK:

6 Q. Are you familiar with something called the switch
7 program?

8 A. Yes.

9 Q. And what was that?

10 A. The switch program, so there were typically two kinds of
11 patients that would be on Subsys. It would be either
12 new-start patients who had never been on a fentanyl product
13 before, or it would be patients who were and had been on a
14 competitor product.

15 So there was a directive at some point to target
16 the switch patients with the idea that patients who had been
17 on a competitor product for some time before we came along
18 would likely be at a higher dose just because they'd been on
19 it for a while and built tolerance.

20 So it was thought that those patients were maybe
21 more valuable to the company because the company made money
22 the higher the dose was of the drug. And so we were supposed
23 to go focus on getting those switch patients in order to
24 secure patients on higher doses of Subsys.

25 Q. Okay. And if you remember the product insert that we

1 went over earlier this morning --

2 **A.** Yes.

3 **Q.** -- you were supposed to start that dosage for Subsys
4 at --

5 **A.** Always at 100 micrograms.

6 **Q.** Always at 100. So was there any pressure to increase the
7 dosage?

8 **A.** Yes. Especially for patients who, as I mentioned, were
9 on a higher dose of a competitor product. 100 micrograms is
10 required when they made the switch over to Subsys; it was the
11 required starting dose. So the concern was that they would
12 abandon using Subsys because they were titrated down to such
13 a low dose and had to go through the titration process again
14 to get back up to an acceptable level of pain management
15 because they'd been used to a higher dose of a different
16 product.

17 **Q.** And was there a commission structure for dosages?

18 **A.** Yes. I don't remember specifically the details, but I do
19 know that we got paid more for the higher doses. So the
20 highest dose we would get paid out the most on, and then it
21 would move on down from there.

22 **Q.** Now, over the course -- you told us you left in December
23 of 2012?

24 **A.** Yes.

25 **Q.** But over the course of that fall of 2012 into the winter

1 while you were still there, can you describe the relationship
2 between Dr. Madison and Sunrise Lee?

3 **A.** It was pretty casual and social. I know that they
4 communicated fairly often. Programs were sometimes scheduled
5 that I didn't know about that maybe he had requested through
6 her or something like that, and I would be let to know about
7 it later. But they maintained a high level of contact
8 outside of the work setting and outside of business hours.

9 **Q.** Did they have a social relationship?

10 **A.** I think so.

11 **Q.** Now, you told us you left in December of 2012?

12 **A.** It was the very end of December. It may have been the
13 first couple of days in January, but right around then.

14 **Q.** And why did you leave?

15 **A.** I had been job searching for quite some time, really even
16 before Alec and Sunrise and everybody was brought to the
17 scene.

18 **Q.** Why were you looking for another job?

19 **A.** I just -- you know, things started out fairly normally
20 but got more intense and more questionable as time went on.
21 So I just personally started to feel uncomfortable with what
22 was going on, and then particularly when I was directed to be
23 spending all this time with Dr. Madison, who I had expressed
24 having concern spending time with from the very beginning.

25 I was just not comfortable at my job. I was not

1 comfortable with the directions that were being given to us
2 as far as how we were supposed to perform our job. Yeah, it
3 took me a little while to find something else in the
4 industry, but I did eventually and left as soon as I could.

5 **Q.** Did you lose any money when you left?

6 **A.** Yes. So I never made much in the way of bonuses until
7 that last fourth quarter, that fall into the winter that you
8 were mentioning, because Dr. Madison had started writing.

9 And so that fourth quarter would have been the
10 quarter that I was really up for making any significant
11 amounts of money. However, I walked away from that bonus
12 when I did take my next job in pharmaceuticals because I was
13 just anxious. I didn't even care. I have just wanted to get
14 out.

15 **Q.** And do you recall approximately how much that would have
16 been?

17 **A.** I think it was between 10 and \$12,000, which to me was
18 significant at the time.

19 **Q.** And after you left Insys, did you have occasion to bump
20 into Dr. Madison and Sunrise Lee again?

21 **A.** I did run into them again. It was accidental. But I was
22 in downtown Chicago, and I was walking past Roka Akor. I
23 think it was probably a Friday or Saturday night, and ran
24 into Dr. Madison standing outside.

25 I had said hello. And he said, oh, yeah, Sunrise

1 is in there with -- I think it was whoever the sales rep that
2 took my place or something afterwards was there.

3 So I went in and just said hello, but they were, I
4 think, having another speaker program of some sort.

5 **Q.** And approximately how long was that after you left?

6 **A.** That would have been in the summer of 2013. So six
7 months or so later.

8 **Q.** Right after you left Insys, did something happen to
9 Dr. Madison?

10 MS. WILKINSON: Objection.

11 THE COURT: Basis?

12 MR. KENDALL: Foundation. Hearsay. Relevance.
13 103.

14 THE COURT: Let me see you at sidebar, please.

15 (The following was held at sidebar.)

16 THE COURT: What happened to him?

17 MR. WYSHAK: He got arrested. However, after he
18 was arrested they continued to use him. They continued to
19 pay him money to speak. He's still promoted as a national --

20 THE COURT: How does she know he's arrested?

21 MR. WYSHAK: It was common knowledge, public
22 knowledge.

23 MS. MINER: The paper probably.

24 MR. WYSHAK: Are you disputing that he was
25 arrested?

1 MS. MINER: You don't get it in through this
2 witness.

3 MR. WYSHAK: Do you want me to put in a newspaper
4 article?

5 THE COURT: Stop. Is he going to testify?

6 MR. WYSHAK: No. Is he in jail?

7 MR. YEAGER: Not in jail yet.

8 MR. WYSHAK: Not yet. He was convicted.

9 THE COURT: None of your witnesses are going to
10 jail.

11 MS. WILKINSON: Exactly. You're getting it.

12 MR. KENDALL: Your Honor, she's clearly not part of
13 the conspiracy. So what she knows through a hearsay source
14 is not relevant. If he wants to put in that Sunrise is aware
15 of his arrest, let him put it in through Babich or Burlakoff
16 or whatever.

17 MR. WYSHAK: She's aware of his arrest as well.

18 THE COURT: I don't think it comes in through her.

19 MR. KENDALL: What she knows is not relevant at
20 this point.

21 MR. WYSHAK: It's a frivolous objection because the
22 evidence is obviously admissible.

23 THE COURT: It is frivolous in the sense that it's
24 going to come in, but I don't think you get it in through
25 this witness now that they've made the objection.

1 MR. WYSHAK: All right.

2 MR. KENDALL: Thank you, Your Honor.

3 (End of sidebar.)

4 BY MR. WYSHAK:

5 Q. One last question. At some point in time after you left
6 Insys, you were paid to provide information to a third party;
7 is that correct?

8 A. Yes.

9 Q. Who was that?

10 A. They were hedge fund analysts, I believe.

11 Q. What was the purpose of talking to them about?

12 MR. KENDALL: Objection. Relevance.

13 THE COURT: Hold on a second.

14 I can't assess the relevance without another
15 sidebar, right? I don't know what the evidence is. Do you
16 want to take another sidebar?

17 MR. WYSHAK: No. I was just going to ask her how
18 much she was paid. It's more in the nature of *Giglio* thing.

19 MR. KENDALL: I don't think it's relevant, but I
20 don't care, Your Honor.

21 THE COURT: You objected.

22 MR. KENDALL: I objected to the whole context.
23 What she gets paid for a consultation, it's not relevant.

24 MR. WYSHAK: I'll withdraw the question.

25 THE COURT: All right.

1 MR. WYSHAK: Thank you very much, Ms. Brown. I
2 have no further questions at this time.

3 THE COURT: Cross?

4 MS. WILKINSON: Yes, Your Honor.

5 CROSS EXAMINATION

6 BY MS. WILKINSON:

7 Q. Good afternoon, Ms. Brown.

8 A. Hello.

9 Q. We've never met before, correct?

10 A. Right.

11 Q. I just want to ask you a few questions, some background
12 questions and a few follow-up things on the things you
13 discussed with Mr. Wyshak.

14 You were just talking about switching patients from
15 other competitor products, correct?

16 A. Yes.

17 Q. And the most widely used competitor product at the time
18 was Actiq, right?

19 A. Yes.

20 Q. There was a generic version of Actiq?

21 A. Yes.

22 Q. And there was a branded version of Actiq?

23 A. Yes, that's right.

24 Q. And many of the physicians that you were working with had
25 a lot of their patients on Actiq, right?

1 **A.** Yes.

2 **Q.** So when you were trying to get them to switch to a
3 product called Subsys, you thought it was a better product,
4 right?

5 **A.** Well, it was up to the physician to decide if he thought
6 it was a better product. I was just there to present the
7 information.

8 **Q.** But you thought it had benefits in comparison to the
9 other product, right?

10 **A.** Inasmuch as I was trying to sell it, but I don't know
11 that I had a strong opinion about that one way or another.

12 **Q.** Well, you wrote emails about that, didn't you, talking
13 about how good the product was and how useful it was?

14 **A.** I don't know. I don't remember.

15 **Q.** Okay. We'll talk about that in a minute.

16 And you suggested that when people are switching
17 from one product to the other, they have to start at 100
18 micrograms, right?

19 **A.** Yes.

20 **Q.** Now, are you aware or were you involved at all with
21 Insys's interaction with the FDA and their approval of their
22 label?

23 **A.** No.

24 **Q.** And are you aware or did you ever look at the 2013 label
25 of Subsys?

1 **A.** No. I would have been gone by then.

2 **Q.** You sold Lazanda for a while, didn't you?

3 **A.** Yes.

4 **Q.** That's a competitor product, isn't it?

5 **A.** Yes.

6 **Q.** Did you do that after or before you were working for
7 Insys?

8 **A.** After.

9 **Q.** So you still had to know about the other products like
10 Subsys, right?

11 **A.** Yes.

12 **Q.** And so you must have been aware, and I want to show you
13 defendant's Exhibit 5022.

14 MS. WILKINSON: If you could put that up on the
15 screen, please.

16 **Q.** Can you see here that this is also a Subsys label or
17 patient insert, as you called it?

18 **A.** Yes.

19 **Q.** And look down at the bottom right-hand corner. Can you
20 read when it was revised?

21 **A.** 7/2013.

22 **Q.** And let's turn to, if we could, page 4 of that. And do
23 you that there's a table --

24 MR. WYSHAK: Objection. If there's no foundation,
25 I don't know where we're going with this. She's never seen

1 it. It was after she worked at the company.

2 THE COURT: Overruled.

3 BY MS. WILKINSON:

4 Q. Take a look at Table Number 1 there. Do you see that?

5 A. Yes.

6 Q. Does that talk about initial dosing recommendations for
7 patients on Actiq?

8 A. Yes.

9 Q. Does that, in fact, show that you do not have to start at
10 100 micrograms if the patient is on different doses of Actiq,
11 let's say 600 micrograms?

12 A. Yes.

13 Q. So it was not, was it, required that a patient who is on
14 a different dose of Actiq, a higher dose, start at
15 100 micrograms of Subsys, right?

16 A. Well, it was at the time that I was selling Subsys.

17 Q. But that was changed, wasn't it?

18 A. Yes.

19 Q. And that was approved by the FDA. You understand that
20 these labels or patient inserts are always approved by the
21 FDA, right?

22 A. Yes.

23 Q. When you first started at Insys, you worked for a
24 Mr. Mike Hemenway; is that right?

25 A. Yes.

1 Q. And you said he was a normal sales manager?

2 A. Yes.

3 Q. You had no complaints in working for him professionally?

4 A. I don't know that it matters. I didn't like him
5 personally, but he was fine as a manager.

6 Q. He never asked you to do anything inappropriate, right?

7 A. No. Well, I mean, pushing for the higher doses and
8 things like that was certainly something he put pressure on
9 us to do, which was something I was uncomfortable with. But
10 I don't know that he ever directly asked us to do something,
11 not that I remember.

12 Q. All right. When you worked for Mr. Hemenway, you were
13 targeting the high decile prescribers of -- the TIRFs, as we
14 call them, right?

15 A. Yes.

16 Q. You received that instruction from Mr. Hemenway when you
17 first started?

18 A. Yes.

19 Q. Let's take a look at Exhibit 5177, please. Do you
20 recognize this email to you from Mr. Hemenway?

21 A. Yes.

22 Q. It's dated March 5, 2012, right?

23 A. Yes.

24 MS. WILKINSON: Your Honor, we'd move to admit
25 5177.

1 THE COURT: Any objection?

2 MR. WYSHAK: No.

3 THE COURT: 5177 is admitted.

4 (Defendant Exhibit No. 5177 admitted.)

5 THE COURT: You didn't move to admit the one before
6 that, 5022.

7 MS. WILKINSON: Because she said she wasn't as
8 familiar what it. We can get it in through someone else.

9 THE COURT: Fine. I wanted to make sure.

10 BY MS. WILKINSON:

11 Q. Let's take a look down. This is called an M.D. alignment
12 report, right?

13 A. Yes.

14 Q. In this report, Mr. Hemenway is sending you a list of
15 physicians, right?

16 A. Yes.

17 Q. And he's giving you some rankings, correct?

18 A. Yes.

19 Q. And the first ranking is ROO decile, right?

20 A. Yes.

21 Q. And ROO is rapid onset opioid?

22 A. Yes.

23 Q. And then he's giving you the Fentora decile, right?

24 A. Yes.

25 Q. So he's showing you how much this doctor prescribes the

1 competitor drug Fentora, right?

2 **A.** Yes.

3 **Q.** And you received this and you used this to help you
4 determine which doctors you should target first, right?

5 **A.** Yes.

6 **Q.** That is not inappropriate, correct?

7 **A.** No.

8 **Q.** And you had the Fentora data in March 5, 2012, right when
9 Subsys was coming out on the market, right?

10 **A.** Yes.

11 **Q.** It's basically a call list, right?

12 **A.** Yes.

13 **Q.** There are about 70 doctors on that list?

14 **A.** I can't see the rest of it, but yes, probably.

15 **Q.** If you need to look at more of it, just let us know.

16 Many are pain specialists, right?

17 **A.** Yes.

18 **Q.** Some are neurologists?

19 **A.** Yes.

20 **Q.** Anesthesiologists?

21 **A.** Yes.

22 **Q.** Oncologists?

23 **A.** Yes.

24 **Q.** Now, I think you've told us before that most oncologists
25 do not prescribe these types of pain medications, right?

1 **A.** Typically not.

2 **Q.** Particularly not TIRFs, right?

3 **A.** Yes.

4 **Q.** And that includes Lazanda, Actiq, Abstral, all the
5 others, right?

6 **A.** Yes.

7 **Q.** And often oncologists refer their cancer patients who
8 they are treating to a pain specialist to address their pain,
9 right?

10 **A.** Yes, that's right.

11 **Q.** So it was much harder to find oncologists who would
12 prescribe a TIRF because they weren't prescribing any of the
13 competitors, right?

14 **A.** Right.

15 **Q.** But you still did try to approach some of those?

16 **A.** Yes.

17 **Q.** After you first started as a sales rep, did Mr. Hemenway
18 go on what's called a ride-along with you?

19 **A.** Yes.

20 **Q.** Is that where your manager goes with you to see how
21 you're doing interacting with the physicians?

22 **A.** Yeah. They spend the day with you and make office calls
23 with you and kind of critique what you're saying and how
24 you're presenting it.

25 **Q.** Did Mr. Hemenway give you some guidance after he had been

1 out with you on a ride-along?

2 **A.** I'm sure he did.

3 **Q.** Let's take a look at Exhibit 5166, please. Do you
4 recognize this email from Mr. Hemenway to you on April 4,
5 2012?

6 **A.** Yes.

7 MS. WILKINSON: Your Honor, we'd move for admission
8 of 5166.

9 THE COURT: Any objection?

10 MR. WYSHAK: No, Your Honor.

11 THE COURT: It's admitted.

12 (Defendant Exhibit No. 5166 admitted.)

13 BY MS. WILKINSON:

14 **Q.** In this email, Mr. Hemenway is complimenting you, saying
15 you were very well versed on the clinical information with
16 Subsys, right?

17 **A.** Yes.

18 **Q.** You had been well trained?

19 **A.** Yes.

20 **Q.** And you yourself were diligent, right?

21 **A.** Yes.

22 **Q.** He asked you to try to figure out a way to maximize your
23 time in the areas, meaning kind of take advantage of one
24 ordinary group of doctors, right, and not have to drive back
25 and forth out of your way.

1 **A.** Yes.

2 **Q.** And he told you to try to work on your top decile targets
3 as much as possible, right?

4 **A.** Yes.

5 **Q.** He even told you to get a lot of face time with targets
6 like Dr. Wilkin, Dr. Caner, and Dr. Ring, right?

7 **A.** I can't see that.

8 MS. WILKINSON: Let's go down, if we could.

9 **Q.** Sorry about that.

10 **A.** Yes.

11 **Q.** You can put that back up. You can see on Number 2 -- why
12 don't we go there -- "Engage the office staff as much as
13 possible. Don't be shy. Open up and try to get to know the
14 staff. You are a very likeable person so let them see that.
15 It will go a long way."

16 You didn't take that guidance as anything other
17 than encouragement, right?

18 **A.** Right.

19 **Q.** Not inappropriate?

20 **A.** No.

21 **Q.** Let's go down a little further if we could. On Number 4,
22 do you see that?

23 **A.** Yes.

24 **Q.** "Sell everyone and let them know you are new and you have
25 a new product."

1 And you understood that Subsys was the newest
2 product on the market?

3 **A.** Yes.

4 **Q.** "Try to see nurses and let them know about the product so
5 they can get excited. The more you tell them now, the more
6 they will listen later." Right?

7 **A.** Yep.

8 **Q.** So it was important not to just educate the physicians
9 but the staff who helped the physicians, right?

10 **A.** Yes.

11 **Q.** And the type of advice Mr. Hemenway gave you was typical
12 sales manager stuff, right?

13 **A.** Very typical.

14 **Q.** And the traditional sales model?

15 **A.** Yes.

16 **Q.** And you didn't believe at the time that you were doing
17 anything inappropriate, right?

18 **A.** No.

19 **Q.** Let's go on to April of 2012 after the launch. I want to
20 show you Exhibit 5167.

21 Do you recognize that email from Mr. Hemenway to
22 you as well as a few others on April 13, 2012?

23 **A.** Yes.

24 **Q.** And if we could go down. Mr. Hemenway is writing to you,
25 talking about certain individuals in your territory, right?

1 **A.** Yes.

2 **Q.** And in the second paragraph, he's talking about three
3 specific doctors and that they have all used TIRFs in the
4 past, right?

5 **A.** Yes.

6 **Q.** And he says, "Please follow up with them and sell them on
7 Subsys. All of their info is on the attached sheet." Right?

8 **A.** Yes.

9 **Q.** And these are oncologists?

10 **A.** The only one that I recognize here is a pain management
11 physician, anesthesiology.

12 **Q.** Okay. Let's turn to the next page, then, if we could.
13 There's a list of a lot of doctors. Do you see that?

14 **A.** Yes.

15 **Q.** And if we go to Number 13, Dr. Connie Ferraro, she's an
16 oncologist, right?

17 **A.** It says so. I don't know who she is.

18 **Q.** There it is. 13.

19 **A.** Yes. It says she's an oncologist.

20 **Q.** Number 23, Dr. Katherine Kefer?

21 **A.** Yep. Also oncology.

22 **Q.** Number 29, Dr. Erin McMenamin?

23 **A.** Yep. Oncology.

24 **Q.** Did you get regular lists of physicians for consultation
25 from Mr. Hemenway during the spring of 2012?

1 **A.** Like I said, we got the initial list, and I'm not sure
2 whether they changed much over the course of time.

3 **Q.** Now, when he mentions to you that they're all former
4 TIRF -- or they prescribe TIRFs, he's suggesting to you that
5 they are candidates for finding patients who will switch,
6 right?

7 **A.** Yes.

8 **Q.** And so at the time, there was a switch strategy in place.
9 I'm not sure it was clear when you were testifying earlier,
10 but the switch strategy started from the very beginning when
11 Subsys was launched on the market, right?

12 **A.** Yeah. It was certainly a type of patient that we were
13 supposed to be considering.

14 **Q.** It made sense, right, because those patients had already
15 determined that they needed a TIRF, right?

16 **A.** Yes.

17 **Q.** And you were trying to persuade those doctors that there
18 were other benefits like the spray technology, right?

19 **A.** Yes.

20 **Q.** You didn't have to use the lollipop, so you didn't have
21 the danger to children or people around them, right?

22 **A.** Right.

23 **Q.** And you didn't have the teeth rotting and other stories
24 you heard from people who used the Actiq lollipop?

25 **A.** Right.

1 **Q.** And you didn't have the mouth sores from the Fentora,
2 right?

3 **A.** Right.

4 **Q.** Were those things that you talked about with the
5 physicians when you were trying to get them to switch?

6 **A.** Yes.

7 **Q.** Did you have some success in getting physicians to
8 switch?

9 **A.** As I mentioned early on, I had a handful of physicians.
10 I couldn't tell you if they were new-start patients or switch
11 patients at this point. I just don't remember. But people
12 tried it and dabbled a little bit in the beginning.

13 **Q.** Let's take a look at TX 5169, please. I'm sorry.
14 Exhibit 5169.

15 Do you recognize this email that you forwarded to a
16 friend, but it was originally from Mr. Hemenway to the sales
17 team, called "Success Strategy"?

18 **A.** Yes.

19 **Q.** Dated May 11, 2012?

20 **A.** Yes.

21 MS. WILKINSON: Your Honor, we'd move to admit
22 5169.

23 MR. WYSHAK: No objection.

24 THE COURT: Admitted.

25 (Defendant Exhibit No. 5169 admitted.)

1 BY MS. WILKINSON:

2 Q. Now, in this email, Mr. Hemenway is writing to the whole
3 sales team, but he's talking about something you did, right?

4 A. Yes.

5 Q. And he's talking about the success, you see he's
6 highlighted it, about what you did to help doctors switch,
7 right?

8 A. Yes.

9 Q. And he said, "When discussing making the switch to
10 doctors, it helps put it in perspective to remind them we are
11 not switching the pharmacology on their patients, only the
12 delivery system." Right?

13 A. Yes.

14 Q. "Switching is not changing the drug, only the delivery
15 system. Great job, Holly." Right?

16 A. Yes.

17 Q. He knows you did that because, if we go down below, you
18 told him that's exactly what you did, right? You wrote him
19 an email, right, that's addressed to Mike?

20 A. Yes.

21 Q. Go up a little bit, please. Thanks, Randall. And you're
22 describing exactly what you did in Dr. Caner's office and
23 what you told him, right, about the medication?

24 A. Yes.

25 Q. And you said -- down there at the bottom, you say, "They

1 have all agreed to write one more prescription for current
2 medications in addition to a Subsys prescription so that
3 patients have what they are they are comfortable with during
4 the titration process." Right?

5 **A.** Yes.

6 **Q.** And "titration" means the patients get the 100-microgram.
7 But if that does not give them pain relief, they're going to
8 take more, right?

9 **A.** Yes.

10 **Q.** And I think you were showed at the very beginning of your
11 testimony the Subsys -- you may even still have it up there,
12 the Subsys spray, right? And this is only a single dose in
13 there, right?

14 **A.** Yes.

15 **Q.** If it's a 100-microgram dose, that's all you can get out
16 of it, right? But when someone is prescribed it, they may be
17 prescribed to use three a day or four a day depending on
18 their medical condition, right?

19 **A.** That's right.

20 **Q.** And if they got a prescription for 30 days, they would
21 get -- let's say they had 3 a day times 7 is 21, right?

22 **A.** Right.

23 **Q.** And then times 4. That's what they would pick up once
24 they were authorized from their pharmacy, right?

25 **A.** Yes.

1 **Q.** So even if a doctor started someone at 100 micrograms, if
2 they didn't get pain relief, they themselves could pick up
3 another spray and give themselves an additional dose, right?

4 **A.** Yes.

5 **Q.** And that's true with Fentora as well, right?

6 **A.** I think so. I'm not an expert though.

7 **Q.** If you get more pills, and they are 100 micrograms a
8 pill, if it doesn't give the patient the pain relief they're
9 looking for, once they have those pills they can take a
10 second one, right?

11 **A.** I believe so, yes.

12 **Q.** Now, when you spoke to these physicians, they were
13 interested in the science behind and the clinical studies
14 behind Subsys, right?

15 **A.** Yes.

16 **Q.** And they asked you on occasion to see those clinical
17 studies, right?

18 **A.** Yes.

19 **Q.** So there's clinical information in the label or the
20 patient insert, right? But Insys and others published the
21 studies in peer-reviewed journals talking about their
22 clinical studies, right?

23 **A.** Yes.

24 **Q.** Let's take a look at Exhibit 5170. This is an email from
25 you to a mellis@peoplepc.com address, right?

1 **A.** Yes.

2 **Q.** On May 21, 2012?

3 **A.** Yes.

4 **Q.** Do you recognize this?

5 **A.** I don't remember it specifically, but yes.

6 **Q.** But this would have been from you?

7 **A.** Yes.

8 MS. WILKINSON: Your Honor, we'd move in 5170.

9 MR. WYSHAK: No objection.

10 THE COURT: Admitted.

11 (Defendant Exhibit No. 5170 admitted.)

12 BY MS. WILKINSON:

13 **Q.** This is to a Dr. Ellias. Did you call on Dr. Ellias?

14 **A.** Yes.

15 **Q.** You say here, "I have not forgot gotten your request for
16 copies of the studies related to Subsys."

17 You say you didn't have the digital files.

18 "I hope after your chat you were able to identify a
19 few patients that might be appropriate candidates for a
20 Subsys upgrade," right?

21 **A.** Mm-hmm.

22 **Q.** You called it an upgrade because you thought it was a
23 better medication than the others on the market, right?

24 **A.** I don't remember why I used that terminology
25 specifically, if it was a directive or if I just came up with

1 that.

2 **Q.** You used it repeatedly, right?

3 **A.** I don't remember, but maybe.

4 **Q.** Now, sometimes physicians were concerned about
5 medications because of either the price or whether the
6 patient's insurance company would actually pay for the
7 medication, right?

8 **A.** Yes.

9 **Q.** So sometimes even if a doctor liked a certain medication,
10 they may not be able to prescribe it to their patient because
11 their insurance company didn't cover that particular
12 medication, right?

13 **A.** Right.

14 **Q.** And in a class of drugs like the TIRFs, sometimes one
15 medication was on a formulary and covered by an insurance
16 plan and the other was not, right?

17 **A.** Right.

18 **Q.** And doctors would discuss that with you, right?

19 **A.** Yes.

20 **Q.** Sometimes frustrated because they wanted to give a
21 patient a specific medication, but they knew it wasn't
22 covered?

23 **A.** Yes.

24 **Q.** And that happened on occasion with Subsys?

25 **A.** Yeah. More often than occasion, I would say.

1 Q. And it happened with Fentora, right?

2 A. Sure.

3 Q. Let's look at Exhibit 5171. It's an email from you on
4 May 25, 2012, to Mr. Hemenway, right?

5 A. Yes.

6 Q. And it's talking about, the subject matter is state
7 Medicaid, right?

8 A. Yes.

9 Q. You're talking about Subsys, that you went and actually
10 tried to check to see whether Medicaid covered Subsys, but it
11 was not preferred, right?

12 A. Right.

13 Q. They would reimburse for Fentora, right?

14 A. Apparently so.

15 Q. And you said, "Maybe in the future we will be included
16 since we are cheaper." Right?

17 A. Yes, I said that.

18 Q. So at the time, Subsys was cheaper than Fentora yet
19 Medicaid was willing to pay for Fentora and not Subsys,
20 right?

21 A. Yeah. I guess that was my understanding at the time.

22 Q. Now, look at the next sentence. You say, "I was bummed
23 because yesterday I had a conversation with Dr. Wilkin about
24 a patient he would love to put on Subsys but she is a state
25 aid patient."

1 MR. WYSHAK: Is this in evidence?

2 MS. WILKINSON: I just moved it.

3 THE COURT: 5170.

4 MR. WYSHAK: 71.

5 THE COURT: 5171 is not in. 5170 is in.

6 MR. WYSHAK: I don't object to it.

7 MS. WILKINSON: I probably didn't say the number
8 right, Your Honor. 517 --

9 THE COURT: There was 5170, right?

10 MS. WILKINSON: Yes.

11 THE COURT: 5170 is in. Any objection to 5171?

12 MR. WYSHAK: No.

13 THE COURT: That's in also.

14 (Defendant Exhibit No. 5171 admitted.)

15 BY MS. WILKINSON:

16 **Q.** Okay, Ms. Brown. Take a look at it again, if you could.
17 You're recounting a conversation with a doctor who said they
18 would like to use Subsys for their patient, but because she's
19 a state aid patient they could not do that, right?

20 **A.** Correct.

21 **Q.** You say, "After that lunch with Dr. Madison today, been
22 practicing my most charming smile. Have a nice long
23 weekend." Right?

24 **A.** Yes.

25 **Q.** So you're talking about Dr. Madison back in May to

1 Mr. Hemenway long before Sunrise Lee is hired, right?

2 **A.** Yes.

3 **Q.** Or before Mr. Burlakoff takes over as vice president of
4 sales?

5 **A.** Yes.

6 **Q.** When you interacted with physicians, you would often hear
7 the stories of the particular patient and how the drug or
8 medication was helping that patient, right?

9 **A.** Yes.

10 **Q.** And sometimes they told very compelling stories about how
11 the medication was helpful, right?

12 **A.** Yes.

13 **Q.** Do you recall -- well, let's take a look at Exhibit 5178.
14 This is an email from you to Mr. Hemenway, again on June 12,
15 2012, right?

16 **A.** Yes.

17 MS. WILKINSON: Move in Exhibit 5178.

18 MR. WYSHAK: No objection.

19 THE COURT: Admitted.

20 (Defendant Exhibit No. 5178 admitted.)

21 BY MS. WILKINSON:

22 **Q.** If we go down to the body of the email, you're talking
23 about Dr. Hasan, right?

24 **A.** Yes.

25 **Q.** Do you remember what kind of doctor she was?

1 **A.** I believe pain management.

2 **Q.** And she is talking here about one of her patients who's a
3 cancer patient, right?

4 **A.** Yes.

5 **Q.** Who had a terminal diagnosis, right?

6 **A.** Yes.

7 **Q.** It says that the woman at that point had been outliving
8 her dire prognosis for quite some time, right?

9 **A.** Yes.

10 **Q.** But she had used all the other TIRFs up to their maximum
11 dose. She had exhausted all of those other options, right?

12 **A.** Yes.

13 **Q.** And Dr. Hasan was excited because Subsys had a higher
14 dose and she could write a prescription for her, right?

15 **A.** Yes.

16 **Q.** And even though she was a cancer patient, she was denied
17 that drug because it turns out the patient wasn't on state
18 aid, right?

19 **A.** Yes.

20 **Q.** And Dr. Hasan was so upset about that that she thought --
21 and thought Subsys was necessary that she wanted to make an
22 appeal, right?

23 **A.** Yes.

24 **Q.** And you wanted to help her with that?

25 **A.** Yes.

1 **Q.** And do you recall whether that patient ever was able to
2 obtain Subsys?

3 **A.** I think the patient actually passed in the meantime.

4 **Q.** Between the time the insurance company said no or the
5 insurance program said no?

6 **A.** Yes.

7 **Q.** She passed away?

8 **A.** Yes. I think so, if I'm remembering it correctly.

9 **Q.** At the bottom of this email, you talk about a cancer
10 center and that you are reviewing Subsys with them, and
11 you're hoping to talk to a group of oncologists there, right?

12 **A.** Yes.

13 **Q.** All of them are D1. When you say D1, you mean they were
14 in the lowest decile, right?

15 **A.** Yes.

16 **Q.** Because they don't prescribe any of the TIRFs, right?

17 **A.** Yes.

18 **Q.** But you were still making an effort to try and get them,
19 right?

20 **A.** Yes.

21 **Q.** On occasion, did you and your fellow salespeople receive
22 emails from Mr. Babich about quarterly sales data and
23 expectations for you as a sales representative?

24 **A.** Yes. I don't remember specifically what that looked
25 like.

1 **Q.** All right. Take a look at Exhibit 5182, please. This is
2 an email from Mr. Babich on June 25, 2012, to all sales reps.
3 You were there at the time, right?

4 **A.** Yes.

5 **Q.** So you would have received this email?

6 **A.** Yes.

7 MS. WILKINSON: We move in 5182.

8 THE COURT: Any objection?

9 MR. WYSHAK: Oh. No, Your Honor.

10 THE COURT: Admitted.

11 (Defendant Exhibit No. 5182 admitted.)

12 BY MS. WILKINSON:

13 **Q.** Let's go down to the first paragraph. And he's talking
14 about the final quarter, right, promoting Subsys?

15 **A.** Yes. The final week of the first quarter.

16 **Q.** In the second sentence he says, "It's easy to say things
17 like do such as I am in sales, but you are all different and
18 you are selling relief that changes patients' lives. Giving
19 relief faster, more powerful, and in a convenient way is our
20 simple message. But you all have seen some patients you are
21 affecting and you know it's so much more than that." Right?

22 **A.** Yes.

23 **Q.** Trying to get everyone kind of revved up?

24 **A.** Mm-hmm.

25 **Q.** And down below he says "Thanks" --

1 MS. WILKINSON: Skip one. Down where it says
2 "Thanks to marketing."

3 Q. And you're RSM. Those are regional sales managers?

4 A. Yes.

5 Q. "We have almost 50 speakers scheduled to come to Chicago
6 for the live speaker training." Right?

7 A. Yes.

8 Q. So certainly at that time you were not -- you and the
9 company was not focused on one or two high prescribers,
10 right?

11 A. No.

12 Q. You were at that very early point training 50 speakers
13 just in Chicago, right?

14 A. Yes.

15 Q. And I think you mentioned the Roka restaurant that
16 Dr. Kapoor owns. You know he owns multiple restaurants?

17 A. Yes.

18 Q. And he was not there at Roka when you were doing your
19 training session?

20 A. No.

21 Q. Or dinner, right?

22 A. No.

23 Q. So these 50 doctors were coming in to get specific
24 training on how to become a speaker?

25 A. Right. These weren't 50 speakers from Chicago, but from

1 across the company, yes.

2 **Q.** This was just, what, three months after the launch of
3 Subsys, right?

4 **A.** Yes.

5 **Q.** And the goal at that time was to get as many speakers as
6 you could, right?

7 **A.** Yes.

8 **Q.** And then have as many doctors or support staff attend
9 those dinners so you would educate as many people as
10 possible?

11 **A.** Yes.

12 **Q.** And the idea was when physicians and their staff heard
13 about the drug, they would then want to go out and prescribe
14 it to their patients, right?

15 **A.** Yes.

16 **Q.** If it were appropriate?

17 **A.** Yes.

18 **Q.** But the idea was to get exposure to as many of those
19 physicians, right, not to this small tiny group of
20 physicians?

21 **A.** That's right.

22 **Q.** Now, let's go down to the bottom of the email, if we
23 could. And he says "Key Hits," and he's talking about how to
24 talk about the product. And he says, "Tell docs to write the
25 same as they would Actiq and Fentora. And for the four

1 doctors still using Abstral and Lazanda, well, get those
2 patients on the best drug."

3 Is that some kind of reference to the fact that
4 Abstral and Lazanda weren't as popular?

5 **A.** Yes. Definitely they weren't as popular.

6 **Q.** And it says here, the same indication as Actiq and
7 Fentora. That's because all the TIRFs had the one indication
8 for breakthrough cancer pain, right?

9 **A.** Yes.

10 **Q.** He says, "You will make more money the more units and
11 higher dose you sell, right?

12 **A.** Yes.

13 **Q.** "This is never changing so continue to discuss with your
14 writers how to ensure the patient is getting proper pain
15 relief." Right? So he ties that higher dose to the proper
16 pain relief?

17 **A.** Yes.

18 **Q.** "We have heard stories where 800 micrograms of Subsys
19 works for some patients that was on a 1200 Actiq and we have
20 heard others say it isn't strong enough in this scenario.
21 Remember, encourage your doctor to practice medicine as he or
22 she sees fit and to use their clinical judgment," right?

23 **A.** Yes.

24 **Q.** And that's what you always did, right?

25 **A.** Yep.

1 **Q.** You never encouraged a doctor to prescribe something that
2 a patient didn't need?

3 **A.** Not on purpose, no.

4 **Q.** As you were working in the summer of 2012 and trying to
5 find more prescribers, you were also looking for more
6 speakers at that time, right?

7 **A.** Yes.

8 **Q.** So that happened again in the summer before Mr. Burlakoff
9 became the head of sales, vice president of sales, and before
10 Ms. Lee came to the company, right?

11 **A.** Yes.

12 **Q.** So you and others had been talking about having a speaker
13 program and preparing for it, right?

14 **A.** Yes.

15 **Q.** And at that time, as you say, the speaker program was on
16 the right track, right?

17 **A.** Yes. I thought so.

18 **Q.** Let's take a look at Exhibit 5179, please. This is an
19 email from you to Tomasa Lagunas, right?

20 **A.** Yes.

21 **Q.** On July 17, 2012?

22 **A.** Yes.

23 MS. WILKINSON: We'd move 5179.

24 MR. WYSHAK: No objection.

25 THE COURT: Admitted.

1 (Defendant Exhibit No. 5179 admitted.)

2 THE COURT: Could I ask you how much more you have
3 with her? Only because it's time for their break, and I
4 am --

5 MS. WILKINSON: Sure. We can take the break right
6 now, Your Honor.

7 THE COURT: Are you sure?

8 MS. WILKINSON: Yes, of course.

9 THE COURT: I'm going to give you have a 15-minute
10 break. We'll see you back.

11 THE CLERK: All rise for the jury.

12 (The jury exits the courtroom.)

13 (Court recessed at 2:16 p.m.)

14 THE CLERK: All rise for the jury.

15 (The jury enters the courtroom.)

16 THE CLERK: Court is back in session. Please be
17 seated.

18 MS. WILKINSON: Your Honor, we moved in 5167 and
19 5182. The government has no objection.

20 THE COURT: 51 --

21 MS. WILKINSON: 67.

22 THE COURT: Yes.

23 MS. WILKINSON: 5182.

24 THE COURT: I think 5182 is already in.

25 MS. WILKINSON: 5179 is the one we were discussing.

1 THE COURT: That's already in, too.

2 BY MS. WILKINSON:

3 Q. Ms. Brown, if we could just go back for a minute, 5179.

4 You're writing to Tomasa. You're talking about
5 visiting with him, right?

6 A. Yes.

7 Q. He works with Dr. Candido?

8 A. Tomasa was, I believe, the office manager for
9 Dr. Candido.

10 Q. You say there in the middle, "I know how busy your office
11 is, so if you become aware of an appropriate patient for
12 Subsys, would you please remind him to give Subsys a try,"
13 right?

14 A. Yes.

15 Q. And there you were being clear, you meant if the patient
16 needed Subsys?

17 A. Yes.

18 Q. You weren't trying to get someone on it who didn't need
19 it?

20 A. No.

21 Q. You say, "Of course we would like to encourage our
22 speakers to become clinical experts in using the product as
23 they will be advocating it to other physicians." Right?

24 A. Yes.

25 Q. There where you're using the word clinical, you're very

1 clear, right?

2 **A.** Mm-hmm.

3 **Q.** It's not subtle. You're saying they need to learn how to
4 use the product, know the risks and benefits, so when they
5 talk to other doctors they can tell them those things, right?

6 **A.** Yes. And this was a doctor who had really been wanting
7 to be a speaker. He was a speaker for a lot of products. It
8 was just something he did a lot of. He was doing all the
9 things, but he had yet at this point to really have any
10 clinical experience with it.

11 **Q.** It made sense for him to get clinical experience because
12 other doctors are coming to learn about that product, right?

13 **A.** Yes.

14 **Q.** The reason they want to hear from a doctor and not from
15 you, no disrespect, is because they want to hear from one of
16 their colleagues who actually has used it with their patient
17 and understands from a clinical perspective how it works,
18 right?

19 **A.** Yes, that's right.

20 **Q.** So there was nothing wrong with telling him that he
21 needed to become a clinical expert and start prescribing it
22 before he became a speaker, right?

23 **A.** Right.

24 **Q.** Until Mr. Burlakoff came to be the senior vice president
25 or vice president for sales, you enjoyed working at Insys,

1 right?

2 **A.** I did in the beginning. Pressure built over time. As I
3 mentioned before, the beginning seemed okay, yeah.

4 **Q.** Mr. Burlakoff became the vice president for sales
5 sometime in August 2012, right?

6 **A.** Yeah. I believe so.

7 **Q.** Let's look at an email you wrote in July to Mr. Babich.
8 This is Exhibit 5184. So this is just a month before. And
9 it started, you see from the bottom where you wrote it, you
10 wrote it on July 6, 2012, right?

11 **A.** Yes.

12 **Q.** Do you recall this email?

13 **A.** Yes.

14 MS. WILKINSON: We move in or offer 5184.

15 MR. WYSHAK: I have no objection to any of these.

16 THE COURT: Admitted.

17 (Defendant Exhibit No. 5184 admitted.)

18 BY MS. WILKINSON:

19 **Q.** Ms. Brown, you're saying here to Mr. Babich, who was the
20 CEO, right?

21 **A.** Yes.

22 **Q.** You wrote directly to him?

23 **A.** Yes.

24 **Q.** And you're thanking him and saying you're very proud to
25 work for him at Insys, right?

1 **A.** Yes.

2 **Q.** At that time, you had just won a contest, sales contest,
3 your region?

4 **A.** What had happened is I think our region was really close
5 to winning the sales contest. We were sort of the underdogs
6 at that time. And so they had given us -- I think it was a
7 thousand dollars or something like that for being really
8 close. It was just something nice that they did for us.

9 **Q.** I want to talk about some of the language that's used in
10 emails. Sometimes when you're writing an email, right,
11 you're not always writing it for posterity's sake, right?

12 **A.** Right.

13 **Q.** And sometimes you may use phrases you don't mean exactly
14 the way they may look years after when someone is trying to
15 decipher your intent or meaning, right?

16 **A.** Yes.

17 **Q.** So let's take a look at an email you wrote on Friday,
18 July 27, 2012.

19 MS. WILKINSON: It's Exhibit 5172, and we offer it
20 if there's no objection from the government.

21 MR. WYSHAK: Yeah. No objection.

22 THE COURT: Admitted.

23 (Defendant Exhibit No. 5172 admitted.)

24 BY MS. WILKINSON:

25 **Q.** This is when you're writing to Mr. Hemenway who is still

1 your supervisor at the end of July, right?

2 **A.** Yes.

3 **Q.** You're talking about your third-quarter goals, right?

4 **A.** Yes.

5 **Q.** That's typical in sales?

6 **A.** Yes.

7 **Q.** Project, kind of tell your boss what you're going to do
8 and try and achieve those goals?

9 **A.** Yes.

10 **Q.** So you talk about your main objective for that quarter is
11 to get as many D6s through 10s writing. Those are those
12 high-decile doctors?

13 **A.** Yes.

14 **Q.** And "As such, many prescriptions will be written for new
15 patients, and I expect copay card usage to be high." Right?

16 **A.** Yes.

17 **Q.** You didn't think there was anything wrong with that,
18 right?

19 **A.** No.

20 **Q.** You talk about it, "Consequently, I believe the way for
21 me to make the largest amount of money in payout this quarter
22 is by gaining market share." Right?

23 **A.** Yes.

24 **Q.** When you go down to the second paragraph, you say, "I
25 plan to change my approach with some of my doctors as well.

1 I have learned in the first quarter that people often don't
2 do what they say they will do, and it is going to take more
3 pressure for me to keep these physicians accountable."

4 Right?

5 **A.** Yes.

6 **Q.** You certainly weren't saying that you were trying to
7 bribe physicians, were you?

8 **A.** No.

9 **Q.** Holding them accountable doesn't mean bribing them?

10 **A.** No.

11 **Q.** You also say, "I plan to question them directly about
12 past promises," right?

13 **A.** Yes.

14 **Q.** "And ask that they follow through. Also, I plan to
15 profile patients more with my docs, especially now that the
16 message is out." Right?

17 **A.** Yes.

18 **Q.** When you say "past promises," you didn't promise a doctor
19 if he prescribed or she prescribed that you would pay them in
20 speaker fees, right?

21 **A.** No. What I meant by "past promises" in this instance was
22 a lot of times, I think, doctors in an effort to sort of shoo
23 you out of their office will say, oh, I promise to put the
24 next patient that comes through the door that's appropriate
25 on this product. And so that's what I was referring to.

1 Q. So sometimes when they say that, it's just a pleasant way
2 to say you can leave now?

3 A. That's just to pacify me, yes.

4 Q. You say, "I plan to profile more with my docs."

5 What do you mean by that?

6 A. We were encouraged to sort of paint pictures or create
7 stories just surrounding some of the pain that some of these
8 patients would go through and sort of get them to try and
9 identify and like, oh, yeah, I remember this patient had a
10 really hard time with this or that. So that's what I meant
11 by "patient profiling."

12 Q. Kind of make it real for the doctors?

13 A. Yes.

14 Q. This is a patient and maybe that would trigger in them a
15 memory because most of these physicians see a lot of
16 patients, don't they?

17 A. Yes.

18 Q. Most of the pain specialists see a very difficult
19 population of patients, right?

20 A. Definitely.

21 Q. Many of those patients have multiple illnesses?

22 A. Yes.

23 Q. Many have been on pain medications for quite some time?

24 A. Yes.

25 Q. Some of those patients lie to their physicians?

1 **A.** Yes.

2 **Q.** And they go see other physicians to get medications?
3 They have to be tested?

4 **A.** Yes.

5 **Q.** So it's not an easy area of medicine to practice, is it?

6 **A.** Not at all.

7 **Q.** And you said you also, the bottom of the next paragraph,
8 "I plan to spread the Subsys message as far as I can while
9 still focusing on my top-decile physicians." Right?

10 **A.** Yes.

11 **Q.** And the point of that is, you want as many people to know
12 about Subsys as possible, right, because you believe in it?

13 **A.** Within my universe, right.

14 **Q.** But you know that the physicians who have the most
15 patients that would already be the right patients for this
16 drug are the ones that you should focus on, right?

17 **A.** Yes.

18 **Q.** And that's something common in the pharmaceutical
19 industry, right?

20 **A.** Yes.

21 **Q.** Nothing unusual about targeting the high-decile
22 prescribers regardless of the medication?

23 **A.** No. That's usually the method.

24 **Q.** Now, let's take another look at an email from August 9,
25 2012, that you wrote also to Mr. Hemenway. It's

1 Exhibit 5174. Do you see that email?

2 **A.** Yes.

3 MS. WILKINSON: Your Honor, we move in 5174.

4 MR. WYSHAK: No objection.

5 THE COURT: Admitted.

6 (Defendant Exhibit No. 5174 admitted.)

7 BY MS. WILKINSON:

8 **Q.** I believe you mentioned Dr. Fisher in your direct
9 examination, right?

10 **A.** Yes.

11 **Q.** You're talking to your boss about some of your programs,
12 right, and some of your doctors?

13 **A.** Mm-hmm.

14 **Q.** And you say, "Below is a list of the doctors I think
15 should be invited"?

16 **A.** Yes.

17 **Q.** Are those ones you think should be invited to be speakers
18 or to attend a speaker program?

19 **A.** I think I was referring to just their attendance at a
20 speaker program.

21 **Q.** And these are different doctors in the Chicago area?

22 **A.** Yes.

23 **Q.** You say, "I think it would be great if we could get the
24 bigger speaker" -- if you could go down a little bit -- "from
25 Bill's territory to do the program." Right?

1 **A.** Yes.

2 **Q.** "Otherwise I think we should go with Dr. Pantle-Fisher
3 for several reasons," right?

4 **A.** Mm-hmm.

5 **Q.** "The first one is I think she is less likely to be
6 competitive with these doctors because she practices strictly
7 downtown," right?

8 **A.** Yes.

9 **Q.** And the reality of that is doctors don't want other
10 doctors to steal their patients, right? So they feel a
11 little competitive?

12 **A.** Right.

13 **Q.** So she practices downtown, and these other doctors
14 practice out in the suburbs?

15 **A.** Yes.

16 **Q.** And you say, "Secondly, I think it will prompt her to
17 write more." Right?

18 **A.** Yes.

19 **Q.** So you are saying that if you make her a speaker, you
20 believe she will prescribe more, right?

21 **A.** Yes. And in the same vein that I was referring to
22 Dr. Candido that these speakers obviously need to be very
23 familiar with how this drug works in execution.

24 **Q.** But there you're tying the speaker and the speaker fee
25 together with the prescriptions, but you're not saying you're

1 paying for those prescriptions, right?

2 **A.** Right.

3 **Q.** You're saying you hope, you think it will prompt her to
4 write more, right?

5 **A.** Yes.

6 **Q.** And that is your hope every time you go see a physician,
7 right?

8 **A.** Sure.

9 **Q.** Whether you make them a speaker or you go to their
10 office, right?

11 **A.** Yes.

12 **Q.** And that doesn't mean that you were trying to bribe
13 Dr. Fisher, right?

14 **A.** No.

15 **Q.** You were not, were you?

16 **A.** I was not, no.

17 **Q.** And you gave other reasons for why she could be a
18 speaker. You talk about "Dr. Joshi is currently maxed out
19 and has no other patients to put on Subsys," right?

20 **A.** Yes.

21 **Q.** Because if they don't have patients who need it, they're
22 not going to use it, right?

23 **A.** That's right.

24 **Q.** You say, "Also, I think her demeanor is confident and
25 competent, and she runs an excellent practice and I think she

1 would be well respected by other physicians."

2 That's all about Dr. Fisher, right?

3 **A.** Yes.

4 **Q.** So you thought she was an ideal candidate to be a speaker
5 and hopefully to prescribe more?

6 **A.** Yes.

7 **Q.** We talked earlier and you talked in your direct
8 examination about higher doses and what would be called
9 titration, right?

10 **A.** Mm-hmm.

11 **Q.** And you understand that the titration was based on the
12 recommendations for the titration was based on a clinical
13 study, right?

14 **A.** Yes.

15 **Q.** And let's take a look at an email you received on
16 August 17, 2012, from Mr. Hemenway. See if you recognize
17 that. It's Exhibit 5175. It's got some colored pictures on
18 there.

19 MS. WILKINSON: If you go down a little bit so she
20 can see that, Randall.

21 **Q.** Do you see that?

22 **A.** Yes.

23 **Q.** And you would have received that as a member of the sales
24 team, right?

25 **A.** Yes.

1 MS. WILKINSON: We move in 5175.

2 MR. WYSHAK: No objection.

3 THE COURT: Admitted.

4 (Defendant Exhibit No. 5175 admitted.)

5 MS. WILKINSON: Thank you.

6 BY MS. WILKINSON:

7 **Q.** Here at the top he calls you --

8 THE COURT: So is 5174. No one waited for me to
9 say yes, but I'll say yes now.

10 MS. WILKINSON: Sorry. We're trying to keep it
11 moving.

12 THE COURT: That's all right.

13 BY MS. WILKINSON:

14 **Q.** This is Mr. Babich calling you all pain kickers, right?

15 **A.** Yes.

16 **Q.** It's kind of another one of those rah-rah sales things?

17 **A.** Yes.

18 **Q.** He says, "I want to show you the importance of getting
19 physicians to titrate their patients to the appropriate
20 dose." Right?

21 **A.** Yes.

22 **Q.** He's talking about the science of it?

23 **A.** Yes.

24 **Q.** And you can see in bold, if you can down, he says in the
25 last column, "You will see that 56 percent of the

1 prescriptions for Actiq are in the 800 micrograms or higher,"
2 right?

3 **A.** Mm-hmm.

4 **Q.** That's the competitor that you're trying to get them to
5 switch from, and he's saying over half of them are in a
6 higher dose, right?

7 **A.** Yes.

8 **Q.** Those patients or those prescriptions.

9 "This is the direction we must head. You will also
10 notice that 26 percent of our WAC comes from 800 micrograms,
11 but the 800 micrograms only accounts for 16 percent of our
12 units. As you move up, you generate more money," right?

13 **A.** Yes.

14 **Q.** So yes, you generate more money on the higher dose,
15 right? But more of these patients who are switching are
16 already on higher doses, right?

17 **A.** Yes.

18 **Q.** And he then shows you, go down a little bit further, the
19 diagrams, right, that support those numbers that he's
20 providing to you?

21 **A.** Mm-hmm.

22 **Q.** And that was the type of information you were getting
23 about the dosing when you were there, right?

24 **A.** Yes. At that time, yeah.

25 **Q.** Now, when you were working with doctors, you followed up,

1 if you could, to give them more information, again to try and
2 persuade them to prescribe Subsys?

3 **A.** Mm-hmm.

4 **Q.** You followed up with, as you said, pain specialists but
5 also with cancer doctors or other people who prescribed the
6 medications?

7 **A.** Yes.

8 **Q.** Let's take a look at Exhibit 5181, which is an email from
9 you on September 20 to Dr. Ellias, dated September 20, 2012.
10 Do you see that?

11 **A.** Yes.

12 **Q.** If we go down, do you see your name at the bottom?

13 **A.** Yes.

14 MS. WILKINSON: We move in 5181.

15 MR. WYSHAK: No objection.

16 THE COURT: Admitted.

17 (Defendant Exhibit No. 5181 admitted.)

18 BY MS. WILKINSON:

19 **Q.** Up at the top you say, "I hope I find you well. I wanted
20 to touch base with you regarding a program I am planning. I
21 would like to do a program at the cancer center at your
22 hospital and have you speak for it." Right?

23 **A.** Yes.

24 **Q.** Do you recall what kind of doctor Dr. Ellias was?

25 **A.** Yes.

1 **Q.** What kind?

2 **A.** Pain management.

3 **Q.** Because he prescribed so many of these types of drugs,
4 you wanted him to come speak to oncologists and other staff
5 who support oncologists, right?

6 **A.** Yes.

7 **Q.** Because he had more expertise in the area?

8 **A.** Yes.

9 **Q.** Let's go down, if we could, to also.

10 "My company has asked reps to pass long the
11 titration message. We are seeing many patients in the field
12 not being titrated to the appropriate therapeutic dose
13 quickly enough and therefore they are not getting adequate
14 relief." Right?

15 **A.** Yep.

16 **Q.** "Obviously not because the product has failed, but
17 because they are on too low of a dose." Right?

18 **A.** Yes.

19 **Q.** And if you need that breakthrough pain relief, you need
20 it right away, right?

21 **A.** Yes.

22 **Q.** Someone who has that kind of intense pain doesn't really
23 wan to wait around, right, for the right dose?

24 **A.** Right.

25 **Q.** "We just ask that you keep in close contact with your new

1 Subsys patients and remember the wide dosage range
2 available."

3 **A.** Mm-hmm.

4 **Q.** So there you were telling them about your experience, but
5 you were not telling them to put a patient on a specific
6 dose, right?

7 **A.** Correct.

8 **Q.** You were just telling them this is what happens and you
9 need to look out for that with your patient or otherwise
10 they're going to think Subsys doesn't work just because they
11 got the wrong dose, right?

12 **A.** Right.

13 **Q.** Now, this is in September, and around that time that's
14 when Mr. Burlakoff takes over the sales programs, right?

15 **A.** Yes.

16 **Q.** Now, he didn't officially run the speakers program,
17 right?

18 **A.** Not in the beginning, no.

19 **Q.** Mr. Napoletano did that for marketing or at least
20 approved those speakers?

21 **A.** I think so in the beginning, yeah.

22 **Q.** But Mr. Burlakoff liked to have influence apparently over
23 some of who those speakers were, right?

24 **A.** Yes.

25 **Q.** And things changed a lot, from your perspective, when

1 Mr. Burlakoff took over, right?

2 **A.** Yes, they did.

3 **Q.** There was kind of an in-crowd and an outside crowd?

4 **A.** Yes.

5 **Q.** You were not in the in-crowd, right?

6 **A.** I was not.

7 **Q.** Thankfully. And Mr. Burlakoff sent emails, right? Do
8 you know whether he texted? Did he ever text you?

9 **A.** He didn't text me frequently, but he used that as a means
10 for communication frequently, yes.

11 **Q.** Did he sometimes use that as a means to communicate
12 things differently than he wanted to communicate to the
13 entire sales force?

14 **A.** Yes.

15 **Q.** And did you ever learn whether he actually got on other
16 people's computers, like Ms. Lee, and sent emails from other
17 people?

18 **A.** I don't know that I ever knew of that happening, but it
19 wouldn't have surprised me.

20 **Q.** And we were looking at the exhibit the government showed
21 you, 1759, if we could look at that again. And that's from
22 Mr. Burlakoff in November right before you left. And if you
23 go back to the bottom where the email starts, he's actually
24 writing to you directly, right?

25 **A.** Mm-hmm.

1 Q. And at the very end, instead of saying talk to Ms. Lee or
2 talk to someone else, he writes in big letters, "Call me if
3 you run into some difficulties," right?

4 A. Yes.

5 Q. And you interpreted that as him saying you can have
6 access just to me and we can talk about any issue, right?

7 A. Yes. As in don't involve anybody else in this. Please
8 just contact me directly.

9 Q. And you didn't believe that was appropriate, did you?

10 A. No.

11 Q. And you didn't do it, did you?

12 A. I don't remember, but I don't think so.

13 Q. Thank you very much. That's all I have.

14 THE COURT: Did you move the admission of 1759?

15 MS. WILKINSON: Yes.

16 THE CLERK: That was already in.

17 THE COURT: It was already in. Okay.

18 MR. HORSTMANN: May I proceed, Your Honor?

19 THE COURT: You may.

20 CROSS EXAMINATION

21 BY MR. HORSTMANN:

22 Q. Good afternoon, Ms. Brown.

23 A. Hello.

24 Q. You had described earlier in your testimony an issue that
25 you had with my client's attire, correct?

1 **A.** Yes.

2 **Q.** And you felt at that she dressed a little too sexy for
3 your taste, correct?

4 **A.** Yeah.

5 **Q.** And you had a problem as well, didn't you, with
6 Dr. Madison?

7 **A.** Yes.

8 **Q.** And you have been critical of his appearance?

9 **A.** Yes.

10 **Q.** From time to time, correct?

11 **A.** Mm-hmm.

12 **Q.** Isn't it true that you have described him as a large
13 black man in a leisure suit?

14 **A.** Yes.

15 **Q.** Is that correct?

16 **A.** Mm-hmm.

17 **Q.** And you've also called him a giant black man in a leisure
18 suit, correct?

19 **A.** He's very tall, yes.

20 **Q.** How tall would you say he is?

21 **A.** Oh, I don't know. Over 6 foot 5.

22 **Q.** And you didn't like going to his Illinois office,
23 correct?

24 **A.** No.

25 **Q.** Because it was in a part of town that you didn't like to

1 go to, correct?

2 **A.** Among other things. But yes.

3 **Q.** And at that time, you didn't know that he had an Indiana
4 practice, correct?

5 **A.** I might have known it just through researching him, but I
6 never went to it.

7 **Q.** Was that in your territory?

8 **A.** No. It was outside of my geographic territory.

9 **Q.** You described his practice as a pill mill, correct?

10 **A.** Yes.

11 **Q.** And that's because there were patients there who were
12 being seen for various conditions involving pain and
13 receiving prescriptions for those conditions, correct?

14 **A.** No. That wasn't the only reason that I thought that.

15 **Q.** Well, you didn't like the appearance of the people who
16 were being seen in Dr. Madison's office, correct?

17 **A.** It looked a little bit sketchy to me, yes.

18 **Q.** You didn't like how they dressed either, right?

19 **A.** I don't know if I liked it or disliked it. It just
20 seemed very different from some of the offices that I went
21 into otherwise.

22 **Q.** And when you visited Dr. Madison's office from time to
23 time, you had an opportunity to meet with his staff, correct?

24 **A.** Yes.

25 **Q.** And he had people working for him, right?

1 **A.** Yes.

2 **Q.** How many people were in his office?

3 **A.** Working for him usually, I don't know, three or four
4 maybe.

5 **Q.** It was a very busy practice, correct?

6 **A.** Yes.

7 **Q.** And there was nobody there who was doing prior
8 authorizations, correct?

9 **A.** No, I would say that there probably were, but I don't
10 know specifically how the day-to-day went for them.

11 **Q.** Did you ever meet somebody whose specific assignment it
12 was to do prior authorizations?

13 **A.** I don't know.

14 **Q.** And during this time period, you had -- well, let me back
15 up.

16 During the summer of 2012, you had occasion to
17 describe your visits to Dr. Madison's office to Mr. Hemenway,
18 correct?

19 **A.** Yes.

20 MR. HORSTMANN: Can we have 668, which is in
21 evidence, I believe. Page 3, I believe. Further on, I
22 believe. Keep going. I'm sorry. It's alphabetical. This
23 we go. Dr. Madison.

24 **Q.** Mr. Wyshak talked to you about this email on direct
25 examination, correct?

1 **A.** Yes.

2 **Q.** But he didn't talk to you about the great lunch that you
3 had with Dr. Madison on August 10 of 2012, did he?

4 **A.** No.

5 MR. WYSHAK: I object to this now. They objected
6 to my --

7 THE COURT: Okay. Mr. Horstmann, you can ask about
8 the rest of that email but without the narrative. Okay?

9 BY MR. HORSTMANN:

10 **Q.** You described for Mr. Hemenway the lunch that you had
11 with Dr. Madison on August 10 as having been great, correct?

12 **A.** Yes.

13 **Q.** And that he promised to give Subsys a try, correct?

14 **A.** Yes.

15 **Q.** And you also described him as forgetful and lazy, and you
16 had made two stops to see him to keep him on track, correct?

17 **A.** Yes.

18 **Q.** And then if we may go further down, you also saw him on
19 August 17, a week later, correct?

20 **A.** Apparently, yes.

21 **Q.** And that's what you're -- you're doing a weekly check-in
22 on Dr. Madison to see if you can squeeze a Subsys
23 prescription out of him, right?

24 **A.** A lot of these visits were fabricated. We were required
25 to make reports back to our boss about progress. It always

1 was about progress. So as I mentioned earlier, I wasn't
2 particularly comfortable calling on this office, so often
3 times some of these were kind of just made up.

4 MR. KENDALL: Your Honor, I move to strike that
5 because of the business records exception under reliability.

6 THE COURT: Hold on, please. Overruled.

7 BY MR. HORSTMANN:

8 Q. As you sit here today, do you remember which ones you
9 lied to your boss about?

10 A. No.

11 Q. So how many of these would you say are true?

12 A. I don't know. Like I mentioned earlier, I would go in
13 there every two weeks, once a month maybe when I felt like I
14 really had to.

15 Q. And when you started seeing Dr. Madison at the Indiana
16 office, it was a much different experience, correct?

17 A. What, office to office you mean?

18 Q. Yes.

19 A. It was different in some ways, yes.

20 Q. You had no problem sitting next to him, as you testified,
21 assisting his staff with the prior approvals, correct?

22 A. It wasn't that I didn't have a problem with it, but I was
23 required to, to keep my job.

24 Q. And you did that every week, sometimes twice a week after
25 he started prescribing, correct?

1 **A.** Yes.

2 **Q.** Is that a yes?

3 **A.** Yes.

4 **Q.** And how many prior approvals during that period of time
5 do you think you helped push through to insurance companies?

6 **A.** I couldn't really even speculate. I don't know.

7 **Q.** How many could you do in a day?

8 **A.** I mean, I wasn't sitting there pumping out paperwork to
9 insurance companies every day. But I don't know. I would
10 say on average they were probably working on four or five at
11 a time.

12 **Q.** And once again, these prior approvals were for patients
13 who were already taking a competitor's drug, either Fentora
14 or Actiq, and switching them over to Subsys, correct?

15 **A.** Not necessarily. That might have been the case, it might
16 have been --

17 **Q.** It's true for --

18 MR. WYSHAK: Let her answer the question. I object
19 to him interrupting her answer.

20 BY MR. HORSTMANN:

21 **Q.** Are you finished with your answer?

22 **A.** No. It would have been one of the two types of patients,
23 either a new start or a product switch. It was patient
24 dependent, obviously.

25 **Q.** Would you agree that a vast majority of Dr. Madison's

1 Indiana patients were being switched from prior medicines
2 rather than new patients?

3 **A.** I couldn't say if it was more than 50 percent. I don't
4 know.

5 **Q.** Your memory doesn't assist you today, does it?

6 **A.** Not for that particular question, no.

7 **Q.** All right. With respect to the time period of August
8 through September of 2012, there were a lot of exciting
9 things going on to assist the sales staff at that period of
10 time at Insys, correct?

11 **A.** You would have to let me know what you meant by
12 "exciting."

13 **Q.** You had a new VP of sales, correct?

14 **A.** Yes.

15 **Q.** Who had different ideas about how to run a sales force,
16 correct?

17 **A.** Yes.

18 **Q.** You had the ability to assist clients, doctors, with
19 prior approvals, correct?

20 **A.** Yes.

21 **Q.** And that was something you were being encouraged to do,
22 correct?

23 **A.** Yes.

24 **Q.** You had a speaker program now that was being administered
25 through SciMedica, correct?

1 **A.** Yes.

2 **Q.** You had something called the switch program, which was
3 helping you switch patients off competitors' medications,
4 correct?

5 **A.** Yes.

6 **Q.** And you had the experience and good will that you had
7 built up with some of these doctors that you had visited for
8 the first six months that you were employed at Insys,
9 correct?

10 **A.** Yes.

11 **Q.** All right. And Sunrise Lee begins her employment around
12 September 17 of 2012, correct? You first met her at the
13 national sales meeting?

14 **A.** Yes.

15 **Q.** And so she happens to arrive at the same time that all of
16 these fabulous new programs are happening, correct?

17 **A.** Yes.

18 **Q.** And one of the doctors that you have her meet very early
19 on in her employment is Dr. Madison, correct?

20 **A.** That was at the directive of the company, though. I
21 wouldn't have chosen to take her there if it were up to me.

22 **Q.** Okay. But Mr. Burlakoff directed you to, right?

23 **A.** Yes.

24 **Q.** It's during that meeting that you say she slipped him a
25 business card, correct?

1 **A.** Yes.

2 **Q.** Slipped isn't really what happened, is it? It wasn't
3 secret, was it?

4 **A.** It wasn't secret, but I think that there was a certain
5 tone to it.

6 **Q.** Well, you said that it was your opinion that there was a
7 certain sexuality to Ms. Lee's presence to begin with, right,
8 that you didn't like?

9 **A.** Yes. That's how it seemed to me.

10 **Q.** So if she slipped a male a business card or gave a male a
11 business card, you would look at that critically to begin
12 with, right?

13 **A.** No. It was in the communications surrounding it which
14 implied that he was supposed to contact her sort of outside
15 of this office setting if he wanted to discuss things
16 further.

17 **Q.** But it was done right in front of you, right?

18 **A.** Yep.

19 **Q.** And you were still the primary contact for Dr. Madison,
20 right?

21 **A.** Yep.

22 **Q.** And he was your client, right?

23 **A.** Yep.

24 **Q.** He never was switched over to Sunrise Lee as a client,
25 correct?

1 **A.** No.

2 **Q.** And you were the one who maintained daily, weekly,
3 monthly contact with him, right?

4 **A.** Yep.

5 **Q.** In your emails that you've now admitted are false that
6 you were sending to your supervisor --

7 MR. WYSHAK: I object to that. It's one email.

8 THE COURT: The jurors will remember the testimony.
9 It's overruled. Go ahead, Mr. Horstmann.

10 BY MR. HORSTMANN:

11 **Q.** In your report to your supervisor in which you now have
12 admitted that you lied about certain meetings with
13 Dr. Madison, you describe having lunches with Dr. Madison,
14 correct?

15 **A.** Yes.

16 **Q.** Did you ever have lunch with Dr. Madison?

17 **A.** Yes.

18 **Q.** Okay. So that was true?

19 **A.** Yes.

20 **Q.** You felt comfortable enough going out of the office to
21 have a lunch with Dr. Madison?

22 **A.** Oh, I never went outside of the office.

23 **Q.** But you brought him lunch and sat down and had lunch with
24 him in the office, right?

25 **A.** Yes.

1 **Q.** Okay. Could we have number 5173, please. Showing you
2 what's been marked as Defendant's Exhibit 5173 from Friday,
3 July 27, 2012. Do you remember that email?

4 **A.** I don't remember it specifically, but yes, I see it.

5 **Q.** Can you look down at the bottom -- actually in the middle
6 where Dr. Madison's name is?

7 **A.** Yep.

8 **Q.** And read it to yourself what you put there.

9 **A.** It says, "Madison. Saw once this week. Dr. Madison is
10 inattentive, forgetful, and too lazy to learn anything new.
11 I have been working more with his MA who is the one who
12 actually knows what is going on with the patients. The MA,
13 however, is afraid of Dr. Madison, just like everybody else
14 in the office. So my concern is that he won't insert his
15 opinion. "

16 **Q.** Do you remember writing that?

17 **A.** I remember feeling this way, yes.

18 **Q.** Well, was this true when you wrote it?

19 **A.** Yes.

20 **Q.** This wasn't one of your lies to your boss?

21 **A.** No. I don't think so. I remember working with his MA,
22 so it happened at one point.

23 **Q.** Okay. Can we have 5176. Showing you what's been
24 premarked as Defendant's Exhibit 5176. I'd ask you to take a
25 look at the email and tell me whether you remember writing

1 this.

2 **A.** Yes.

3 **Q.** This is an email you wrote to Sunrise with a cc to Alec
4 Burlakoff on November 14, correct?

5 **A.** Yes.

6 **Q.** And in this email --

7 MR. HORSTMANN: I'd move it into evidence.

8 THE COURT: Which? 5176?

9 MR. HORSTMANN: Yes. 5176.

10 MR. WYSHAK: No objection.

11 THE COURT: Did you mean to move in 5173?

12 MR. WYSHAK: No objection to that either.

13 MR. HORSTMANN: In looking at it, I thought it was
14 already in. I'll move it in and we can sort it out.

15 THE COURT: No objections to 5173 or 5176.

16 MR. WYSHAK: No, Your Honor.

17 THE COURT: Okay. They're both admitted.

18 (Defendant Exhibit Nos. 5173 and 5176 admitted.)

19 BY MR. HORSTMANN:

20 **Q.** Directing your attention again to the November 14, 2012,
21 email that you wrote to Sunrise, you indicated that you had
22 one prescription from Madison that day?

23 **A.** No. I indicated that I had three, but one was a
24 600-microgram refill.

25 **Q.** You emphasized that, correct?

1 **A.** Yes.

2 **Q.** You thought that was important for them to know, correct?

3 **A.** Mm-hmm.

4 **Q.** And you also wanted to let them know that there was good
5 news regarding insurance coverage for two patients of
6 Dr. Madison's, correct?

7 **A.** Yes.

8 **Q.** And there was nothing wrong with that, right?

9 **A.** No.

10 **Q.** And that you were getting new approvals every week in
11 Madison's office, correct?

12 **A.** Yes.

13 **Q.** And then you wanted to let them know in particular that
14 the Fentora rep had, pardon my language, pissed off
15 Dr. Madison, correct?

16 **A.** Yes.

17 **Q.** And that was important for them to know, correct?

18 **A.** Yes.

19 **Q.** Were you lying to Sunrise when you sent this email?

20 **A.** I don't think so.

21 **Q.** Because this was easy to track, right? The three
22 prescriptions were easy to track?

23 **A.** Right.

24 **Q.** Directing your attention to Exhibit 5185, not in
25 evidence, directing your attention to this email. Do you

1 remember writing this?

2 **A.** Again not specifically, but I remember the time, yes.

3 **Q.** Do you remember receiving the response from
4 Mr. Burlakoff?

5 **A.** Again not specifically.

6 MR. HORSTMANN: Move this into evidence.

7 MR. WYSHAK: No objection.

8 THE COURT: Admitted.

9 (Defendant Exhibit No. 5185 admitted.)

10 BY MR. HORSTMANN:

11 **Q.** In this email on October 24, you're reporting to Ms. Lee
12 and Mr. Burlakoff that you had seven prescriptions today from
13 Madison, correct?

14 **A.** Yes.

15 **Q.** Mr. Burlakoff's response is "Fantastic news," correct?

16 **A.** Yes.

17 **Q.** These are prescriptions that are being issued while
18 you're sitting in the office, right?

19 **A.** Yes.

20 **Q.** You're able to collect them and count them and summarize
21 them for Ms. Lee and Ms. [sic] Burlakoff after you leave the
22 office that day, right?

23 **A.** I mean I didn't have them in my hand to count, but the
24 idea was that we had these enrollment forms that were given
25 to each patient, you know, basically as a prescription and

1 sent over to Linden Care. So that's how I knew the number.

2 **Q.** But these emails were true, correct?

3 **A.** Yes.

4 **Q.** Directing your attention to 5187, which is not in
5 evidence, did you have a chance to review that email?

6 **A.** Yes.

7 **Q.** Do you remember receiving that email from Mr. Burlakoff?

8 **A.** Again not specifically, but I remember the time, yes.

9 MR. HORSTMANN: Move this into evidence, Your
10 Honor.

11 MR. WYSHAK: No objection.

12 THE COURT: Admitted.

13 (Defendant Exhibit No. 5187 admitted.)

14 BY MR. HORSTMANN:

15 **Q.** And this email talks about an event that's going to take
16 place on the evening of November 6, correct?

17 **A.** Yes.

18 **Q.** And this is Mr. Burlakoff specifically telling you with a
19 cc to Ms. Lee that he's going to be in Chicago Tuesday
20 evening, correct?

21 **A.** Yes.

22 **Q.** And the plan is to have Sunnie partner up with another
23 local rep to get some customers to Roka, correct?

24 **A.** Yes.

25 **Q.** And that Alec was going to get some additional doctors to

1 the same dinner, correct?

2 **A.** Yes.

3 **Q.** And he wanted to do one big dinner that Tuesday, right?

4 **A.** Mm-hmm.

5 **Q.** And down at the bottom he says it's all about the
6 dinners, correct?

7 **A.** Yes.

8 **Q.** And these were not just sales meetings. These were
9 networking opportunities, correct?

10 **A.** Yes.

11 **Q.** And you were encouraged to develop personal, friendly
12 business relationships with doctors, correct?

13 **A.** Certainly friendly business relationships, yes.

14 **Q.** These dinners provided the sales reps an opportunity to
15 do that, correct?

16 **A.** Yes.

17 **Q.** And you were encouraged to socialize and mingle with the
18 doctors who were there, right?

19 **A.** I think this only maybe happened that one time. But I
20 suppose for this event, yes.

21 **Q.** Do you remember doctors being at Roka on November 6? Do
22 you remember this happening?

23 **A.** I remember Alec being in town for this. I remember
24 Dr. Madison being there. I don't remember a whole lot else
25 about it. The meetings kind of ran together at some point.

1 It's hard for me to tease out the details.

2 **Q.** So a lot of these events have sort of run together in
3 your mind, correct?

4 **A.** Yeah.

5 **Q.** There's a fair amount of socializing with doctors and
6 your work colleagues that went on during this period of time,
7 correct?

8 **A.** Yes.

9 **Q.** And is this the speaker program that ended in several of
10 you going to the Underground?

11 **A.** I don't know that it was this one. Again, I can't
12 remember, you know, the specific details.

13 **Q.** Alcohol was involved as well, correct?

14 **A.** Yes.

15 **Q.** And there was a fair amount of alcohol consumed at these
16 events, correct?

17 **A.** Yes.

18 **Q.** So that's affected your memory as well, correct?

19 **A.** Yes.

20 MR. HORSTMANN: I think 195 is already in evidence,
21 correct? It's a long day, Your Honor. I'm sorry.

22 THE COURT: Karen says it's already in.

23 BY MR. HORSTMANN:

24 **Q.** All right. 195. Do you remember talking about this
25 email with Mr. Wyshak?

1 **A.** Yes.

2 **Q.** And there are a fair amount of people on this email,
3 right?

4 **A.** Yes.

5 **Q.** And this is the -- these are the people that you remember
6 being at Roka that spilled over into the Underground,
7 correct?

8 **A.** Yes. I believe it was this night.

9 **Q.** Okay. It wasn't Halloween, as you remembered; it was a
10 month later, correct?

11 **A.** Perhaps.

12 **Q.** And with respect to the event itself, do you remember
13 being asked to complete an attendance sheet for SciMedica for
14 this event?

15 **A.** So there was an event that happened right at Halloween,
16 and I think this was maybe a separate one from that one that
17 I was referring to. So this was another event. And I don't
18 remember at that point what the directive was about sign-in
19 sheets or anything about that.

20 **Q.** Could the one that you remember being around Halloween be
21 the one that he we just talked about as being November 6?

22 **A.** It could have been.

23 **Q.** Would there have been two speaker programs back to back
24 on two nights involving the same speaker?

25 **A.** There could have been, yeah.

1 **Q.** Could have been. Okay. Do you remember speaker programs
2 taking place on the 5th and 6th of November?

3 **A.** It was definitely a possibility, but I don't know if that
4 was the case or not.

5 MR. HORSTMANN: Your Honor, may I use the ELMO just
6 for the witness?

7 THE COURT: Of course.

8 BY MR. HORSTMANN:

9 **Q.** Showing you what has been premarked as defendant's
10 Exhibit 5214, I'd ask you if you remember that type of form
11 generally.

12 **A.** Yeah. They were used at one point as a sign-in sheet.

13 **Q.** Okay. And do you recognize any of the handwriting on
14 this particular sheet?

15 **A.** Well, yeah. I recognize my own.

16 **Q.** And your name's on it as the rep, correct?

17 **A.** Yes.

18 MR. HORSTMANN: Your Honor, I'd offer this as
19 Defense Exhibit --

20 THE COURT: -- 5214. Any objection?

21 MR. WYSHAK: No.

22 THE COURT: It's admitted.

23 (Defendant Exhibit No. 5214 admitted.)

24 MR. HORSTMANN: May we publish it to the jury?

25 BY MR. HORSTMANN:

1 **Q.** Without going back to it, on direct exam you were
2 questioned about an email where Mr. Burlakoff was requesting
3 follow-up names and signatures from you for attendees at a
4 Madison speaker program, correct?

5 **A.** Yes.

6 **Q.** And this appears to be a Madison speaker program that
7 occurred on November 5 of 2012, correct?

8 **A.** Yes.

9 **Q.** And you're listed as the rep, and you sign off with your
10 signature at the top, correct?

11 **A.** Yes.

12 **Q.** And the speaker signs off as well, correct?

13 **A.** Yes.

14 **Q.** Do you recognize that to be Dr. Madison's signature?

15 **A.** I wouldn't remember what that looked like.

16 **Q.** And this is a dinner program, correct?

17 **A.** Yes.

18 **Q.** Directing your attention down to the bottom of the form,
19 there's a reference to SciMedica group, correct?

20 **A.** Yes.

21 **Q.** So this is a form that's prepared by SciMedica group
22 pursuant to whatever contract they had with Insys at that
23 point in time, correct?

24 **A.** Yes.

25 **Q.** And that's where you're supposed to submit this

1 attendance log was to SciMedica, correct?

2 **A.** Yes.

3 **Q.** All right. And this lists three additional doctors who
4 were at this particular speaker program, correct?

5 **A.** Yes.

6 **Q.** And were you responsible for collecting their names and
7 signatures?

8 **A.** Yes.

9 **Q.** And are these accurate, to the best of your knowledge?

10 **A.** Yes.

11 **Q.** You didn't falsify anybody's signature on these?

12 **A.** No.

13 **Q.** This was a legitimate speaker program put on by Insys for
14 Dr. Madison on November 5 of 2012, correct?

15 **A.** Yes.

16 **Q.** Directing your attention to the event that occurred at
17 the Underground, was this the first time that you had ever
18 been to the Underground?

19 **A.** I think so, yes.

20 **Q.** And do you recall receiving any instructions from
21 Mr. Burlakoff before going to the Underground with Ms. Havens
22 and Ms. Lee and Dr. Madison?

23 **A.** No, I didn't receive anything from him directly, I don't
24 think.

25 **Q.** Okay. How would you describe the Underground?

1 **A.** A club, you know, loud, a little trashy.

2 **Q.** Not your style?

3 **A.** Not my style.

4 **Q.** There are a fair amount of half-dressed people walking
5 around the club at any point in time?

6 **A.** Yes.

7 **Q.** And some fairly promiscuous dancing going on, correct?

8 **A.** Yes.

9 **Q.** You didn't like it there, did you?

10 **A.** No. It wasn't my kind of place.

11 **Q.** All right. And you had a fair amount to drink that
12 night, right?

13 **A.** Yes.

14 **Q.** And at one time you claim you looked over and you saw
15 something happening between Ms. Lee and Dr. Madison, correct?

16 **A.** Yes.

17 **Q.** And you had been warned about Dr. Madison by your prior
18 supervisor, correct?

19 **A.** Yes.

20 **Q.** And you had been warned that he had a certain reputation
21 with female sales reps, correct?

22 **A.** Maybe.

23 **Q.** You're not remembering that?

24 **A.** Well, yeah. I guess so, by Mike, yes.

25 **Q.** And what you saw was consistent with the warning that

1 Mr. Hemenway had given you, correct?

2 **A.** Yes.

3 **Q.** Dr. Madison appeared to be taking advantage of Ms. Lee,
4 correct?

5 **A.** Yes.

6 MR. HORSTMANN: May I have one moment, Your Honor?

7 THE COURT: Yes.

8 MR. HORSTMANN: No further questions, Your Honor.

9 MS. MINER: Just a few, Your Honor.

10 THE COURT: Go ahead.

11 CROSS EXAMINATION

12 BY MS. MINER:

13 **Q.** Good afternoon, Ms. Brown.

14 **A.** Hello.

15 **Q.** I know it's been a long day, so I'm going to be quick.

16 **A.** That's okay.

17 **Q.** You testified after the launch of Subsys you started
18 detailing doctors in your territory on the medication to try
19 to get them to prescribe the medication, right?

20 **A.** Yes.

21 **Q.** In the course of your early detailing, you learned that
22 managed care presented some obstacles to doctors prescribing.
23 Isn't that fair?

24 **A.** Yes.

25 **Q.** Some plans wouldn't cover Subsys at all, would they?

1 **A.** No, they wouldn't.

2 **Q.** And other plans required prior approval, right?

3 **A.** Yes.

4 **Q.** And prior approval involves paperwork going back and
5 forth?

6 **A.** Yes.

7 **Q.** To the insurance company?

8 **A.** Yes.

9 **Q.** That's not limited to Subsys, right?

10 **A.** No. It happens with all kind of drugs.

11 **Q.** It happens in all the class of drugs?

12 **A.** Yeah. For the most part.

13 **Q.** And it also happens in all sorts of branded drugs having
14 other indications, right?

15 **A.** Yes.

16 **Q.** And doctors' offices don't like to do it, do they?

17 **A.** They don't like it, no.

18 **Q.** In fact, the prior approval process was often a nightmare
19 for doctors. Isn't that fair?

20 **A.** Yes. They would say that.

21 **Q.** And you heard complaints from doctors and their staffs
22 about the process, right?

23 **A.** Yes.

24 **Q.** And you had never been given any training in prior
25 authorizations, right?

1 **A.** No. It was my first exposure to them.

2 **Q.** And you had no history with the insurance industry,
3 right?

4 **A.** No.

5 **Q.** And in your experience, a lot of prior approvals for
6 Subsys were being denied at first, right?

7 **A.** Yes.

8 **Q.** And they were being denied for all sorts of reasons,
9 right?

10 **A.** Yes.

11 **Q.** Sometimes the doctor's office didn't put the right
12 information on it, right?

13 **A.** Right.

14 **Q.** Sometimes it was missing a phone number, right?

15 **A.** Yes.

16 **Q.** It was a pain, right?

17 **A.** Yes.

18 **Q.** If a prior approval was denied, the doctor's office could
19 appeal that through the insurer, right?

20 **A.** Right.

21 **Q.** That was even more time consuming?

22 **A.** Yes. That was something they were even less likely to
23 do.

24 **Q.** And that was even more work for the doctors office?

25 **A.** Yes.

1 **Q.** And sometimes in that process, the insurance companies
2 required what was called a letter of medical necessity; is
3 that right?

4 **A.** Yes.

5 MS. MINER: If we could have Exhibit 504, which is
6 in evidence, on the screens, please. Thank you.

7 **Q.** And on direct examination you testified about this form
8 letter of medical necessity letter, correct?

9 **A.** Yes.

10 **Q.** You don't recall who gave you this at corporate, right?

11 **A.** I don't remember where it came from.

12 **Q.** You don't even remember when you got it, right?

13 **A.** No.

14 **Q.** But it was given to you by somebody that you could use
15 with doctors' offices?

16 **A.** Yes.

17 **Q.** Now, this was just a form, right?

18 **A.** Yes.

19 **Q.** To fill it out, doctors were supposed to go through the
20 patient's file, correct?

21 **A.** Yes.

22 **Q.** And where it says in the middle, "In an effort to control
23 his pain and improve his quality of life, he or she has been
24 prescribed the following medications."

25 And the intent there was for the doctor to write

1 down the medications that that patient had tried and failed,
2 right?

3 **A.** Yes.

4 **Q.** And they would get that information from the patient
5 file, right?

6 **A.** Yes.

7 **Q.** You never made up a medication to put on that list, did
8 you?

9 **A.** No.

10 **Q.** You never told a doctor to make up any medication?

11 **A.** No.

12 **Q.** And if you go to the next paragraph, the second line, it
13 says, "However, severe breakthrough pain continues to be a
14 problem."

15 Do you see that?

16 **A.** Yes.

17 **Q.** You were asked on direct that it doesn't say "severe
18 breakthrough cancer pain," correct?

19 **A.** Right.

20 **Q.** Because doctors could prescribe it for any patient,
21 correct?

22 **A.** Right.

23 **Q.** So this form doesn't say "cancer." It's not representing
24 that it's a cancer patient, right?

25 **A.** Right.

1 **Q.** It refers to whatever diagnosis that patient had. Isn't
2 that fair?

3 **A.** Yes.

4 **Q.** You yourself never drafted these letters, right?

5 **A.** No.

6 **Q.** The doctor's office did it, correct?

7 **A.** Right.

8 **Q.** You might guide them or tell them -- or help fax things,
9 but you didn't sit there and write the information, correct?

10 **A.** No.

11 **Q.** And you never told a doctor's office to lie on any of
12 these forms, did you?

13 **A.** No.

14 **Q.** To your knowledge, when you were there, no doctor did lie
15 on these forms, correct?

16 **A.** I don't think so. Not that I knew of.

17 **Q.** Now, at some point during your tenure, Insys entered into
18 an arrangement with a pharmacy called Linden Care. Do you
19 recall that?

20 **A.** Yes.

21 MS. MINER: If I could have Exhibit 5185, just for
22 counsel and the witness, please. I'm sorry. This is in
23 evidence. So everybody can see it.

24 **Q.** So this is an email where you're talking about the
25 prescriptions went to Linden Care?

1 **A.** Yes.

2 MS. MINER: If I could have 5165, which I don't
3 believe is in evidence. So just counsel and the -- and if
4 you could look at the header.

5 **Q.** This is an email from Mike Gurry, correct?

6 **A.** Yes.

7 **Q.** To sales all?

8 **A.** Yes.

9 **Q.** That would have included you, correct?

10 **A.** Yes.

11 **Q.** It's dated October 23, correct?

12 **A.** Yep.

13 MS. MINER: I'd move its admission.

14 MR. WYSHAK: No objection.

15 THE COURT: Admitted.

16 (Defendant Exhibit No. 5165 admitted.)

17 BY MS. MINER:

18 **Q.** This is an email informing the sales about the
19 partnership with Linden Care, correct?

20 **A.** Yes.

21 **Q.** And that actually helped the sales reps to some extent,
22 correct?

23 **A.** Yes, to some extent it did.

24 **Q.** Because if doctors' offices didn't know how to do them or
25 didn't want to do them it, Linden Care in certain states

1 would help out?

2 **A.** That was the idea, yeah.

3 **Q.** And your doctors utilized that?

4 **A.** Yes.

5 **Q.** As a tool, correct?

6 **A.** Yes.

7 **Q.** After working at Insys, you went to a company called
8 Depomed, correct?

9 **A.** Yes.

10 **Q.** And that markets a drug called Lazanda, correct?

11 **A.** Yes.

12 **Q.** That's another one of these TIRF REMs, correct?

13 **A.** Yes.

14 **Q.** It's a competitor to Subsys, correct?

15 **A.** Yes.

16 **Q.** And you encountered the same type of prior approval
17 issues with Lazanda, correct?

18 **A.** Yes.

19 **Q.** Lazanda also had a program for its patients that would
20 help them through the prior authorization.

21 **A.** Yes.

22 **Q.** It was called signature support?

23 **A.** Yes.

24 **Q.** Do you recognize this form?

25 **A.** Yes.

1 **Q.** Is that the form that Depomed used?

2 **A.** Yes.

3 MR. WYSHAK: I object to this. What's this got to
4 do with this case? It's irrelevant.

5 THE COURT: You mean you object on relevance?

6 MR. WYSHAK: Yes.

7 THE COURT: Are you going to link this up,
8 Ms. Miner?

9 MS. MINER: Can we approach?

10 THE COURT: Yes. Take a stretch if you all want.

11 (The following was held at sidebar.)

12 MS. MINER: Your Honor, I would offer this. It's a
13 similar program at Depomed, competitor. I will link it up.
14 Part of what they did is do market research to find out what
15 other -- this is an Insys document. It came from Insys. It
16 came actually from the government.

17 MR. WYSHAK: It's not an Insys document.

18 MS. MINER: It came from the government to us
19 through Insys. And I think the fact that other companies
20 have similar programs doing similar things is relevant.

21 MR. WYSHAK: First off, it's beyond the scope of
22 direct. I didn't ask anything about this subject matter.
23 This was brought up, I think, by one of defense counsel on
24 cross. I don't know what the relevance of this is with this
25 particular witness. It may be some other witness you can get

1 this in through.

2 MS. MINER: Mr. Wyshak skipped that part of her
3 employment.

4 THE COURT: Are you going to question her -- Is the
5 amount of questions you're going to going to take more or
6 less time than this side bar?

7 MS. MINER: Much less.

8 THE COURT: Okay. Go ahead.

9 MR. KENDALL: Thank you, Your Honor. Can we make
10 that a precedent?

11 (End of sidebar.)

12 BY MS. MINER:

13 **Q.** Exhibit 5213 --

14 THE COURT: -- which has not been admitted, right?

15 MS. MINER: I'd move its admission, Your Honor.

16 THE COURT: They object. It's overruled. It's
17 admitted --

18 MS. MINER: Thank you.

19 THE COURT: -- subject to you linking it up.

20 (Defendant Exhibit No. 5213 admitted.)

21 BY MS. MINER:

22 **Q.** This is a form with the similar types of information that
23 was required by Insys, right?

24 **A.** Yes.

25 **Q.** So this was nothing new to you at Depomed, right?

1 **A.** No.

2 MS. MINER: Nothing further, Your Honor.

3 MR. TYRRELL: I'll be very brief, Your Honor.

4 THE COURT: Why do you guys keep telling me you're
5 going to be very brief? Am I putting time pressure on
6 anybody?

7 MR. TYRRELL: I am true to my word.

8 CROSS EXAMINATION

9 BY MR. TYRRELL:

10 **Q.** Good afternoon, Ms. Brown.

11 **A.** Hello.

12 **Q.** We've never met. My name is Steven Tyrrell, and I
13 represent Rich Simon. You and I have never met, have we?

14 **A.** No.

15 **Q.** Likewise, you've never met Mr. Simon, have you?

16 **A.** No. I don't even know which one --

17 **Q.** Do you still have Exhibit 1 in front of you?

18 **A.** Yes.

19 **Q.** I think you told us before that's an individual unit of
20 Subsys, correct?

21 **A.** Yes.

22 **Q.** And those Subsys units would come in different strengths,
23 100, 200, 400, 600 and 800 micrograms, correct?

24 **A.** Yes.

25 **Q.** So if a patient had received a prescription, a refill,

1 and had been titrated up to a higher dose, say
2 1200 micrograms, they would actually have to take two of
3 those in order to address their breakthrough pain, correct?

4 **A.** Yes, that's right.

5 **Q.** So for someone like that that was experiencing, let's
6 say, four episodes of breakthrough pain a day, they would
7 actually have eight for the day, correct?

8 **A.** Yes.

9 **Q.** And a 30-day prescription would then be 240 units,
10 correct?

11 **A.** Yep.

12 MR. TYRRELL: Thank you. I have nothing further.

13 MR. KENDALL: Nothing, Your Honor.

14 THE COURT: Just for the jury. We have direct, we
15 have cross, we have redirect, and recross. But we don't do
16 any more than that. The government has the option of
17 redirect.

18 MR. WYSHAK: Yes. Thank you, Your Honor.

19 REDIRECT EXAMINATION

20 BY MR. WYSHAK:

21 **Q.** Ms. Brown, is there a difference between a sales pitch
22 and science?

23 **A.** A sales pitch and what?

24 **Q.** Science?

25 **A.** Yes.

1 **Q.** Now, maybe it's easier if I use the ELMO. You were asked
2 on cross-examination, for example, Defendant's Exhibit 5169.
3 But this is a email from Mike Hemenway to his sales team,
4 right?

5 **A.** Yes.

6 **Q.** And in that first paragraph there's some bold language?

7 **A.** Mm-hmm.

8 **Q.** And it says, "When discussing making the switch with
9 doctors, it helps put it in perspective to remind them we are
10 not switching the pharmacology on their patients, only the
11 delivery system."

12 Now, is that a sales pitch, or is that the science?

13 **A.** I mean, that's referring -- it's not a completely
14 accurate statement. So I think it's kind of a mash-up of
15 trying to put science into a sales statement.

16 **Q.** All right. It's a sales pitch, right?

17 **A.** Yeah.

18 **Q.** It's to try to convince the doctors. In fact,
19 Defendant's Exhibit 5022, which is the revised package
20 insert, specifically says --

21 MR. KENDALL: Can we not show the Post-its, Your
22 Honor?

23 THE COURT: Post-it off. Karen is telling me this
24 is not admitted.

25 MR. WYSHAK: Well, I offer it then.

1 MS. WILKINSON: No objection, Your Honor.

2 MR. TYRRELL: No objection. Without the Post-it.

3 THE COURT: I wasn't saying you couldn't admit it.

4 I was just saying it was not admitted. If there's no
5 objection and you want it admitted, 5022 is admitted.

6 (Defendant Exhibit No. 5022 admitted.)

7 BY MR. WYSHAK:

8 Q. Looking at when it starts with "When dispensing," can you
9 see that on your screen?

10 A. Yes.

11 Q. "When dispensing Subsys, do not substitute a Subsys
12 prescription for any other fentanyl product. Substantial
13 differences exist in the pharmacokinetic" --

14 You know that word, right? How do you say that?

15 A. -- "pharmacokinetic profile" --

16 Q. Okay.

17 -- "of Subsys compared to other fentanyl products
18 that result in clinically important differences in the rate
19 and extent of absorption of fentanyl. As a result of these
20 differences, the substitutions of the same dose of Subsys for
21 the same dose of any other fentanyl product may result in a
22 fatal overdose."

23 Again, this document that you were shown by defense
24 is more of a sales pitch than the science, right?

25 A. Yes.

1 **Q.** This one also, Defendant's Exhibit 5175. This is about,
2 again, the switch, starting where my finger is.

3 "Our titration message" --

4 I don't know if you can see that.

5 "Our titration message must be clear, concise, and
6 delivered on each column. The last column you'll see
7 50 percent of the prescriptions for Actiq are in the 800
8 micrograms or higher. This is the direction we must head.
9 You will also note that 26 percent of our" --

10 What is WAC with the dollar sign? What does that
11 mean?

12 **A.** Wholesale acquisition cost.

13 **Q.** Okay.

14 -- "come from the 800 micrograms, but the 800
15 micrograms only accounts for 16 percent of our units. As you
16 move up, you generate more money." Right?

17 **A.** Yes.

18 **Q.** More money for you, correct?

19 **A.** Yes.

20 **Q.** And more money for the company?

21 **A.** Yes.

22 **Q.** Again this is something, a message you're being sent to
23 try to incentivize you to have doctors titrate up; is that
24 right?

25 **A.** Yes.

1 **Q.** And in fact, I think it's Ms. Wilkinson asked you about
2 this titration issue. And again showing you what's
3 Defendant's Exhibit 5022 and the chart --

4 MS. WILKINSON: Your Honor, we'd just ask again the
5 yellow sticky not be --

6 MR. WYSHAK: I'm sorry.

7 BY MR. WYSHAK:

8 **Q.** If you look at this chart, again, this is the FDA product
9 insert?

10 **A.** Yes.

11 **Q.** Right? The science doesn't equate Actiq doses with
12 Subsys doses, right?

13 **A.** Not directly.

14 **Q.** As a matter of fact, it's 200 of Actiq to 100 of Subsys.
15 For the 800 which they're talking about in that last email,
16 it's 200, correct?

17 **A.** Yes.

18 **Q.** So there's not a-one-to one correlation --

19 **A.** No.

20 **Q.** -- for a Subsys dose to an Actiq dose. Is that fair to
21 say?

22 **A.** That's correct.

23 **Q.** So again, this is a little sales pitch that Defendant's
24 Exhibit 5175, your boss is sending you to try to get you to
25 give a message to doctors, right?

1 **A.** Yes.

2 **Q.** And again this one, 5182. Right where my finger is
3 there. He's telling you, "Giving relief faster, more
4 powerful, and in a convenient way is our simple message."

5 So we talked about that a little bit, too, didn't
6 we? The faster acting effects of Subsys makes it more
7 dangerous; is that right?

8 **A.** Yes.

9 MR. WYSHAK: That's all I have, Your Honor.

10 THE COURT: Recross anyone?

11 MS. WILKINSON: Just two things, Your Honor. I
12 just need to find them.

13 MR. WYSHAK: I do have one more question. Sorry.

14 BY MR. WYSHAK:

15 **Q.** Mr. Horstmann asked you about this event at the
16 Underground and whether Dr. Madison was taking advantage of
17 Ms. Lee. Do you remember that question?

18 **A.** Yes.

19 **Q.** So did you see Dr. Madison forcibly acting in any way to
20 force Ms. Lee to do what it was she was doing?

21 **A.** No. It didn't seem forced.

22 **Q.** Was she objecting?

23 **A.** No.

24 **Q.** To the activity?

25 **A.** No.

1 **Q.** Was she participating in the activity?

2 MR. HORSTMANN: Objection.

3 THE COURT: Overruled.

4 **A.** Yes, from what I could see.

5 BY MR. WYSHAK:

6 **Q.** Okay. Without getting into the lurid details -- okay, I
7 won't.

8 Did she ever say to you after that event that there
9 was any force used at all in that incident?

10 **A.** No.

11 **Q.** Okay.

12 MR. WYSHAK: Thank you.

13 RE CROSS EXAMINATION

14 BY MS. WILKINSON:

15 **Q.** Ms. Brown, in 5022, which is the label for Subsys that
16 shows the conversion chart for Actiq and Subsys --

17 **A.** Mm-hmm.

18 **Q.** -- that's just where you start, the initial dosing,
19 right? It's not saying where you end up. It's saying if
20 someone was on 600 micrograms of Actiq, you need to start
21 them on Subsys at 200, right?

22 **A.** Yes.

23 **Q.** Do you see where it says up there "Initial Dosing,"
24 right?

25 **A.** It's not pulled up, but yes.

1 Q. And then you can titrate up from there, correct?

2 A. Yes.

3 Q. This is not a chart, as counsel just suggested, that's
4 supposed to say what dose equals another dose. It's just
5 saying if you are on this dose you're supposed to start in
6 Subsys on this?

7 A. That would be correct, yes.

8 Q. Now, almost all the warnings that you were read early in
9 the case or early in the examination about the dangers of
10 Subsys are the exact same warnings and dangers on Lazanda,
11 right?

12 A. Yes.

13 Q. You've become familiar with that label, right?

14 A. Yes.

15 Q. It has the same format, right, because the FDA regulates
16 the format?

17 A. Yes.

18 Q. It talks about the risk of respiratory depression?

19 A. Yes.

20 Q. Abuse, addiction?

21 MR. WYSHAK: I object. This is beyond the scope of
22 redirect.

23 THE COURT: True.

24 MS. WILKINSON: Okay. I have one more, Your Honor.

25 THE COURT: You can have one more. But he's right,

1 it's beyond the scope.

2 BY MS. WILKINSON:

3 Q. And does it also warn of death?

4 A. Yes.

5 MS. WILKINSON: That's all.

6 THE COURT: Anybody else? Get yourself to a
7 microphone, Mr. Horstmann. Pick a microphone. You have to
8 pick one.

9 RE CROSS EXAMINATION

10 BY MR. HORSTMANN:

11 Q. Ms. Brown, I believe you testified earlier that
12 Dr. Madison was 6-5, correct?

13 A. Yes.

14 Q. How much did he weigh?

15 A. Oh, gosh. I don't know. 300-plus.

16 Q. 300-plus? And Sunrise Lee is every bit of --

17 A. Very small.

18 Q. -- 4 foot 3, 100 pounds soaking wet?

19 A. Yes.

20 Q. Both of them were very inebriated that night?

21 A. Yes, I would assume so.

22 Q. And you were, too, correct?

23 A. Yes.

24 Q. Okay.

25 MR. HORSTMANN: Okay. No further questions.

1 THE COURT: Okay. You are excused.

2 MR. WYSHAK: May we approach?

3 THE COURT: Yes.

4 (The following was held at sidebar.)

5 MR. WYSHAK: So we could start with another
6 witness, but I do teach Tuesday nights.

7 THE COURT: I'm not going to make you start a new
8 witness. This has been a very efficient day. I'm not going
9 to make you start another witness. The jurors are asking
10 about our schedule for the next few weeks. I'm thinking
11 subject to all of your schedules, that next Friday would also
12 be a half day.

13 MS. WILKINSON: Great.

14 THE COURT: And 2/8 would also be a half day.

15 MS. WILKINSON: Is that a Friday?

16 THE COURT: That's also a Friday.

17 MR. YEAGER: That's the next two Fridays we're
18 talking about?

19 THE COURT: Next two Fridays.

20 MR. TYRRELL: This Friday is 2/1, that's a half day
21 and then the 8th.

22 THE COURT: And 2/13 I have to do half day because
23 I have Harvard arguments in the afternoon.

24 MS. WILKINSON: Good luck.

25 THE COURT: 2/18 is President's Day, we'll take

1 that whole day off. 2/27 is a Wednesday, which I also need
2 off. I have a sick kid who has a procedure that day.

3 MR. TYRRELL: Are we off that week?

4 THE CLERK: They asked that.

5 MS. WILKINSON: There's someone on there. Can we
6 let them go while we're doing it?

7 THE COURT: I want to tell them.

8 MS. MINER: Can we just get up to that week?

9 THE COURT: Up to the 2/27?

10 MS. MINER: No. Up to the 18th.

11 MR. TYRRELL: Can we make the inquiry of them?

12 THE COURT: I can. That's what I was going to ask
13 you. Do you want me to ask them or do you want me to hold
14 off?

15 MS. MINER: I would ask, Your Honor.

16 MS. WILKINSON: Let us talk about our schedule
17 first.

18 MR. TYRRELL: I thought based on who we had picked
19 that we were going to be off that week.

20 THE COURT: My notes don't reflect that we picked
21 anyone.

22 MS. WILKINSON: I think we know the juror, and
23 we'll be able to bring it to her and it will make it easier.

24 THE COURT: We'll give them the next couple of
25 weeks. And then just so you know -- actually I'm going to

1 let them go. Can you guys stay here for a second?

2 (End of sidebar.)

3 THE COURT: The government is ready to go with its
4 next witness, but it doesn't seem to make a lot of sense to
5 start. I know you guys have been asking about the schedule
6 for the next few weeks so you can plan. Let me give you at
7 least the next three weeks. We'll sit a half day this Friday
8 for February 1. We will sit a half day next Friday which is
9 February 8. We will sit a half day the next week on
10 Wednesday which is February 13.

11 So for those of you that need to do your
12 Valentine's Day shopping you'll have Wednesday afternoon.
13 And that will give you -- we'll give you what comes after
14 that tomorrow.

15 My usual warnings. Keep an open mind. We're just
16 getting going here. No communications to any people or any
17 social media outlet. And the no homework rule. Don't do any
18 independent research or anything that may have intrigued you
19 here today. And we will see you at 10:00 tomorrow. Okay?
20 Thanks, everybody.

21 THE CLERK: All rise for the jury.

22 (The jury exits the courtroom.)

23 THE COURT: Could I see counsel back at sidebar.

24 (The following was held at sidebar.)

25 THE COURT: This is just an FYI. Jon Saltzman from

1 The Globe, apparently he was notified about that juror that
2 made the --

3 MR. KENDALL: He contacted me as well.

4 MS. MINER: He contacted everybody, Your Honor.

5 THE COURT: Through the Clerk's office we've
6 responded to him and told him that the juror was not in
7 violation of our court order, and that nobody is seeking to
8 have him removed. So that's just an FYI. It was done
9 through the Clerk's office and not by the Court.

10 MS. WILKINSON: They don't have enough to write
11 about.

12 MR. KENDALL: He missed my opening, that's why.

13 THE COURT: I just feel like it's better to not
14 have them speculating about it. Just an FYI that we did
15 that. Karen says there's some other juror trying to make her
16 escape. Karen says she's been professing all day that she
17 has a note to give Karen, and Karen keeps putting her off.
18 She's off collecting the note right now.

19 MS. WILKINSON: Which one?

20 THE COURT: I think it's number five. I think it's
21 the one whose mother has the MRI on Friday. The one with a
22 smile on her face. I'm hoping that the MRI is in the
23 afternoon. We're already sitting a half day that day. I'm
24 hoping that solves that problem. That's this Friday. That's
25 what the original complaint was. The original complaint was

1 there was an MRI on Friday.

2 MR. KENDALL: Your Honor, may I raise an
3 evidentiary issue. You don't have to rule on it, but you can
4 think about it and address it in the morning.

5 THE COURT: Thank you.

6 MR. KENDALL: You don't have to rule on it now.
7 I'm not pressing for you to give a decision. We can decide
8 it tomorrow if that's convenient for you. The witness
9 testified that she put in false entries into those weekly
10 updates. There's four exhibits that are relevant to that.
11 Exhibit 2 and then three others. She reiterates the same
12 thing. She testified she falsified the entries.

13 THE COURT: It's just like your billing at White &
14 Case.

15 MR. KENDALL: Your Honor, it's like Yale Strogoff's
16 records from his junkyard. Touche you could say. It is
17 exactly the issue of her client when she was in private
18 practice.

19 THE COURT: Misunderstood.

20 MR. KENDALL: Your Honor, and the records were
21 excluded for failure to meet 803(6) (E), preparation is not
22 otherwise untrustworthy, the prerequisite for the business
23 records. The government didn't lay a foundation and ask its
24 witness were they done with reliability. The record seemed
25 like it got skimmed over in laying the foundation.

1 I'd ask you to reconsider if that meets the
2 standard of 803(6) (E) because they clearly were not prepared
3 in a way that they were reliable. Just the opposite. They
4 purposely were prepared to deceive. I know it's a ridiculous
5 objection ...

6 THE COURT: It is.

7 MR. KENDALL: I'm making fun of the government
8 saying all of our objections are ridiculous.

9 MR. LAZARUS: Your Honor, we disagree.

10 THE COURT: I'm shocked to hear that.

11 MR. LAZARUS: In any event, the witness Maury Rice
12 testifies tomorrow and will include those records. The
13 argument, as I understand, was there was false information
14 that was put in there. It still is business record that was
15 kept in the ordinary course. It was still information sent
16 to her boss. The fact that the information that she put in
17 may not have been accurate, it was still prepared in the
18 ordinary course.

19 MR. KENDALL: Your Honor, the government is
20 ignoring the point. 803(6) (E) says in addition to everything
21 she says they also have to be prepared in a way that was
22 trustworthy. If she falsifies things, it can never be
23 prepared in a way that it was trustworthy.

24 THE COURT: I will look at it tonight. My
25 understanding is trustworthy means it's an accurate rendition

1 of that which she's putting into the record.

2 MR. KENDALL: She has to have personal knowledge
3 and record that personal knowledge accurately. That was the
4 Strogoff junkyard records. They had personal knowledge and
5 then put in the wrong numbers purposefully. That's why they
6 didn't qualify.

7 THE COURT: I will look at it. Don't hold your
8 breath on that objection.

9 MR. LAZARUS: In any event, Your Honor, I believe
10 the record is the portion she was testifying about,
11 particularly Dr. Madison and his shady pill mill, that was
12 accurate. Anything else they were talking about these other
13 events, we disagree, but we would ask the Court to look at
14 that carefully.

15 MS. WILKINSON: The only part they want in, Your
16 Honor.

17 MR. KENDALL: Your Honor, going forward when they
18 lay the foundation, can we have them do it according to Hoyle
19 and go through each issue, whether the person had knowledge
20 that this is accurate, because otherwise we're going to get
21 more false stuff coming in because somebody certified it who
22 never read it and knows nothing about it.

23 MR. LAZARUS: First of all, there's no obligation
24 that the person has read all of the records that they're
25 putting in and certifying as business records. That's clear.

1 Second of all, I'll put in whatever foundation the Court
2 would like. We turned over timely certifications for all
3 these documents. They comply with 902(11). They don't need
4 any additional evidence of authenticity. They don't need
5 testimony. The law is clear on that.

6 If counsel is not satisfied with the
7 certifications, that's fine. But I will note that for all
8 the other records that counsel asks us to consider, we're
9 going have to take another look at how to handle documents.
10 We're going to be here forever.

11 THE COURT: Stop. No, we're not. I will take a
12 look at the issue tonight. Don't hold your breath on the
13 success of that motion. You have should not torture them by
14 going through their certificates tonight.

15 MR. LAZARUS: Understood, Your Honor.

16 THE COURT: I don't know where Karen is. Her
17 failure to return is not a good sign.

18 Let me know what your thoughts are on February
19 vacation. Personally I'd rather forge forward to get it
20 done. I just looked at the top sheets. You can check and
21 then I'm happy to give them the option. I'm happy to stand
22 silent on it.

23 MR. STOJILKOVIC: One of the jurors checked it
24 would make a difference if we're off those weeks. It's one
25 of the jurors in the front row.

1 MR. LAZARUS: We would like to push forward.

2 MR. TYRRELL: The other thing is, I think, I don't
3 remember how exactly you framed it with them, but I think you
4 suggested that we might give up that week. Others may have
5 made plans. I will tell you that I have made plans, but
6 they're business plans. They're not personal plans. So it's
7 going to be difficult for me. If you say I have to be here,
8 I'm going to be here.

9 THE COURT: I'd like to be done by April vacation.

10 MR. TYRRELL: I would, too. I'm from out of town.

11 THE COURT: Personally I'd prefer to forge forward,
12 but I'm going to accommodate the jurors.

13 MR. YEAGER: You could think about splitting the
14 baby.

15 THE COURT: Half a week. We could do that.

16 MR. TYRRELL: It's the Tuesday and Wednesday that
17 are difficult me.

18 (Court recessed at 4:03 p.m.)
19
20
21
22
23
24
25

INDEX OF WITNESSES

WITNESSPAGE

HOLLY BROWN

Direct Examination By Mr. Wyshak	35
Cross Examination By Ms. Wilkinson.....	156
Cross Examination By Mr. Horstmann.....	204
Cross Examination By Ms. Miner.....	227
Cross Examination By Mr. Tyrrell.....	237
Redirect Examination By Mr. Wyshak.....	238
Recross Examination By Ms. Wilkinson.....	244
Recross Examination By Mr. Horstmann.....	246

1	E X H I B I T S		
2	Government Exhibit		Received
3	1759	.....	124
4	1758	.....	130
5	1757	.....	132
6	1765	.....	133
7	1755	.....	137
8	195	.....	140
9	92	.....	144
10	1760	.....	148
11			
12	<u>Defendant Exhibit</u>		<u>Received</u>
13	1	.....	42
14	2	.....	42
15	504	.....	96
16	669	.....	90
17	681	.....	105
18	1762	.....	102
19	1764	.....	93
20	5177	.....	161
21	5166	.....	164
22	5169	.....	169
23	5170	.....	173
24	5171	.....	176
25			

1	5178	.....	177
2	5182	.....	178
3	5179	.....	185
4	5184	.....	188
5	5172	.....	189
6	5174	.....	194
7	5175	.....	198
8	5181	.....	200
9	5173	.....	216
10	5176	.....	216
11	5185	.....	218
12	5187	.....	219
13	5241	.....	223
14	5165	.....	233
15	5213	.....	236
16	5022	.....	240
17			
18			
19			
20			
21			
22			
23			
24			
25			